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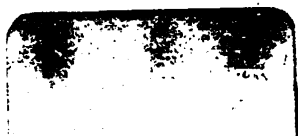
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REPORT

OF THE

NINTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 18th, 19th and 20th, 1886.

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PHILADELPHIA:

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TRANSACTIONS
OF THE
NINTH ANNUAL MEETING
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HELD IN
Putnam Music Hall,
SARATOGA SPRINGS, NEW YORK,
AUGUST 18, 19, AND 20, 1886.

Wednesday, August 18, 10 A. M.

Luke P. Poland, of Vermont, Chairman of the Executive Committee, called the meeting to order, and presented the President of the Association, William Allen Butler, of New York, who delivered the opening address. (*See Appendix.*)

On motion of Luke P. Poland, seconded by Charles A. Peabody, Walter George Smith, of Philadelphia, was chosen Secretary *pro tempore* in the absence of the Secretary, Edward Otis Hinkley.

Luke P. Poland, as chairman of the Executive Committee, presented a list of names which the General Council recommended for election as members.

(*See List of Members elected, at the end of the Minutes of the Proceedings.*)

The President :

There being no objection to any name read, those gentlemen are declared elected.

At this point a recess of fifteen minutes was taken to enable new members to sign the roll and give an opportunity to nominate members of the General Council.

Upon reassembling, Luke P. Poland read the following nominations for the General Council, and they were elected by the Association :

Alabama, H. C. Semple; Arkansas, M. M. Cohn; California, Manuel Eyre; Connecticut, Johnson T. Platt; Delaware, Ignatius C. Grubb; District of Columbia, Henry Wise Garnett; Georgia, George A. Mercer; Illinois, Thomas Dent; Indiana, R. S. Taylor; Iowa, George G. Wright; Kentucky, E. F. Trabue; Louisiana, Thomas L. Bayne; Maryland, R. M. Venable; Massachusetts, M. F. Dickinson, Jr.; Michigan, H. L. Baker; Maine, A. A. Strout; Minnesota, H. F. Stevens; Mississippi, R. O. Reynolds; Missouri, Shepard Barclay; Nebraska, C. F. Manderson; New Hampshire, J. W. Fellows; New Jersey, C. Borchering; New York, David Dudley Field; North Carolina, T. B. Keogh; Ohio, E. P. Green; Pennsylvania, A. T. McClintock; Rhode Island, Nicholson Van Slyck; South Carolina, C. A. Woods; Tennessee, J. O. Pierce; Texas, Jacob Waelder; Vermont, Luke P. Poland; Virginia, S. F. Beach; West Virginia, J. A. Hutchinson; Wisconsin, A. L. Cary.

The President :

The next business in order is the report of the Secretary, which will now be read.

(See the Report, at the end of the Minutes.)

The President :

The report of the Treasurer is next in order.

(See the Report, at the end of the Minutes.)

The President :

The next business in order is the report of the Executive Committee.

Luke P. Poland, of Vermont :

I have not had an opportunity for a conference with the other members of the committee, and I should prefer, therefore, to present the report later.

The President :

Judge Poland asks for an extension of time. There being no objection, the extension is granted.

David Dudley Field, of New York :

Mr. President, I wish to observe that the report of the Committee on Delay and Uncertainty in Judicial Administration has been printed, and I will ask leave to present it formally, that it may be distributed among members before the discussion upon it to-morrow.

The President :

If there is no objection, both reports of that committee will be regarded as formally presented by Mr. Field.

Luke P. Poland :

The paper that is announced on our programme for to-morrow evening, I understand, will not be presented. The gentleman will not be here for the purpose of reading his paper, and therefore I move that the time be given to the discussion of the reports presented by Mr. Field, should the same not be finished to-morrow morning.

The President :

If there is no objection, that order will be followed. I would now name as the Committee on Publication: Henry C. Semple, of Alabama; A. Q. Keasbey, of New Jersey; Edwin P. Green, of Ohio; M. F. Dickinson, Jr., of Massachusetts; and Thomas L. Bayne, of Louisiana.

On motion of William E. Earle, of the District of Columbia, seconded by John F. Dillon, of New York, the Secretary was

directed to convey by telegraph to Edward Otis Hinkley the regrets of the members here assembled at his inability to be present, and expressing the sympathy of the Association for him in his affliction.

W. H. H. Russell, of New York, offered the following amendment to Article XIII of the By-Laws, which was referred to the Executive Committee:

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of all back dues. *Provided* such restoration shall be recommended by a member of the Local Council of his state, or in their absence, at an annual meeting by any two members of the Association.

Rufus King, of Ohio:

The subject of the evils arising from the multiplicity of reports should be made the order for to-morrow morning, immediately after the reports of the standing committees. In printing the programme this was omitted, and I speak of it now that the order which was made at the last meeting may be followed.

Henry C. Semple, of Alabama:

At the last meeting, the latter part of the report of the committee, composed of the President, Mr. Baldwin, and Mr. Russell, relating to the supervision of the criminal classes, was received by the Association, upon motion of Mr. Russell, and its consideration and discussion postponed until this meeting. I rise now to inquire at what time that will come up for consideration.

Simeon E. Baldwin, of Connecticut:

Mr. President, as I understand it, the report of the standing committee will be presented to-morrow morning, and from the report of the Secretary it will be observed that a number of reports are to be made on subjects of more or less importance from standing committees. It is of course for the meeting to order when any report will be taken up.

Henry C. Sample :

I move, then, that the discussion of that subject be taken up immediately after the disposition of the matter of the report of the committee of which Mr. Field is chairman.

Carried.

On motion, the meeting adjourned until 7 30 P. M.

Wednesday Evening, 8 P. M.

The President :

The meeting will come to order.

The Secretary :

The Boston Bar Association have sent two delegates to this meeting, viz., George O. Shattuck and Lauriston L. Scaife.

The President :

The first business before the Association this evening will be the reading of a paper by Mr. Johnson T. Platt, of Connecticut, on "*The Opportunity for the Development of Jurisprudence in the United States.*" I take great pleasure in introducing Mr. Platt to the Association.

(*See Appendix.*)

Luke P. Poland, of Vermont :

I move you, sir, that the Committee on Judicial Administration have leave now to report upon the subject which was made, at the last meeting of the Association, the special order for to-morrow morning.

Carried.

John F. Dillon, of New York :

I will state the manner in which this subject arose, and why it is that I am to ask the Association to listen to some observations which I have made upon it.

(*See the Report, in the Appendix.*)

The President :

As there does not seem to be a disposition to discuss this report, perhaps owing to the lateness of the hour, a motion to adjourn would be in order.

On motion, the meeting adjourned until Thursday morning at 10 o'clock.

SECOND DAY.

Thursday, August 19, 10 A. M.

The President :

The meeting will please come to order. The first business in order this morning is the annual address, to be delivered by Thomas J. Semmes, of Louisiana, whom I now have the honor of introducing to the Association.

(See the Address, in the Appendix.)

The President :

The next business in order is reports from standing committees. The Committee on Jurisprudence and Law Reform is first.

Simeon E. Baldwin, of Connecticut :

The Committee on Jurisprudence and Law Reform has three or four different reports to present to the Association, as follows :

(See the Reports, in the Appendix.)

Simeon E. Baldwin moved that the report on the rule of law relating to creditors of insolvent debtors be received and the committee discharged.

B. A. Willis, of New York, moved that the consideration of the whole subject be deferred to the next annual meeting.

The President suggested that the report be first accepted, which was done, whereupon the motion of Mr. Willis was put to a vote and carried, and all the reports of this committee were thus disposed of.

Luke P. Poland, of Vermont :

A resolution was introduced and referred to the committee for the amendment of By-Law XIII. The Executive

Committee have considered that resolution and recommend its adoption.

The President:

The next standing committee is that on Judicial Administration and Remedial Procedure, of which Rufus King, of Ohio, is chairman.

Rufus King, of Ohio:

Two subjects were referred to this committee last year. The first relates to the subject brought forward by Judge Dillon two years ago, in respect to the evils, etc., in regard to the multiplicity of the reports of judicial decisions, which report I will first read.

(See Report, in the Appendix.)

On motion of Rufus King, the report was received and the resolution at the end of it adopted.

Rufus King:

The other report is as follows:

(See Report, in the Appendix)

On motion of Mr. King, the report was accepted.

Rufus King:

I move the adoption of the resolution contained in that report.

N. W. Ladd, of Massachusetts:

I question the advisability of putting upon record a statement made in that report, that this system has been adopted only in two states. Massachusetts has lately inaugurated a law upon that subject.

Henry Budd, of Pennsylvania:

I move that the whole matter be postponed until next year.
Carried.

The President:

The Committee on Legal Education is next in order. There seems to be no report. The Committee on Commercial Law is next.

George A. Mercer, of Georgia :

That committee desires to state that no special subject for report was referred to the committee at the last session, and in view of the large amount of special matter to be discussed at this meeting they have deemed it inexpedient to make any report.

The President :

The Committee on International Law.

Charles A. Peabody, of New York :

There is no report from that committee, as there was nothing referred to them to be reported upon.

The President :

The Committee on Grievances. There seems to be no report. The Committee on Publication.

H. C. Semple, of Alabama :

That committee has no report to make.

The President :

Before calling for reports of special committees, is it the pleasure of the meeting to take any action upon the proposed amendment to Article XIII of the By-Laws? Judge Poland moved its adoption. Is that motion seconded?

C. C. Bonney, of Illinois :

I second it.

Adopted.

The President :

A communication has been received from our absent Secretary in response to our message to him, which I will read :

“WARRENTON, VA., August 19, 1886.

“WALTER GEORGE SMITH,

“*Secretary, Putnam Hall:*

“It is very gratifying to me to receive your kind resolutions. My constant desire is that our meetings may continue to increase in usefulness and to become more and more agreeable socially.

EDWARD OTIS HINKLEY.”

The President :

The next business is the special order—the discussion of the report of the Committee on Delays and Uncertainty in Judicial Administration.

David Dudley Field, of New York :

The report was presented yesterday, and I have nothing therefore to do but to move the adoption of the first resolution, simply saying that that resolution was the only one that was laid over from the last meeting and the one first considered in this report, and it is desirable that they should be kept distinct. Only two members of the committee are here, Judge Dillon and myself, and with your leave, Mr. President, and that of the Association, Judge Dillon will make a statement at the opening, and, if I am permitted, I will close the debate.

John F. Dillon, of New York :

The text of the resolution is this, and I think it important to refer to it at the outset, since the vote which will be given will be a vote upon this proposition as it stands. It is in these words: "The law itself should be reduced, so far as possible, to the form of a statute"—only this and nothing more. What does it mean? What law is here referred to? Evidently, of course, the law of the land. And what is the law of the land? It is simply, when reduced to its last analysis, a command, an imperative rule of conduct, prescribed in this country by the legislature. Therefore, every citizen, whether it be a rule of civil or criminal conduct, is bound to know what this command is and equally bound to obey it. It is implied in every command that it shall be known to whomsoever is expected to obey it. History has held up to reprobation Caligula, who is said to have framed his laws in such small characters, and to have hung them so high upon the pillars, that they could not be read, and it has been the practice from the beginning in this country that all laws which prescribe what I may term the civil rules for the conduct of the citizens, so far as penalties are annexed to them, should be reduced to the

form of a statute, and altogether so, I believe, in England. The reason, so far as criminal statutes are concerned, obviously is that they should be known and should be in a shape to be known by those whose obedience is expected. That being the nature of law, that being the law which is referred to in the resolution under consideration, viz., a command, whatever may be its form, prescribed by the supreme legislative authority to, and binding upon, every citizen, the next subject of inquiry is, Where is this law to be found which everyone is expected to know, and everyone at his peril is bound to obey? We all know where it is found. Fragmentary portions of it only are found in any statute. The great volume of our law, the great body of the rules of civil conduct which are obligatory upon every citizen in the community, are found in the volumes of our reports. These, as we all know, now numbering some six thousand volumes, run back through a series of centuries. I enter upon no eulogium of the nature of judiciary law. I only call attention to the fact that these six thousand volumes are, in the first place, full of obsolete law, or law which will be held to be obsolete when brought into direct adjudication before the courts. In the next place, these volumes are full of conflicting cases, or, if not absolutely conflicting, cases which have refined upon previous cases and introduced exceptions and limitations. In the next place they are full of cases of repetition, thousands of cases adding nothing substantially to the body of the law. Some learned gentleman has written three volumes on the statute of frauds. Does anyone doubt that a commission to do the work could take that vast volume of decisions, many of which are conflicting, many of which are spun to the greatest nicety of refinement, and reduce them to some practicable order? Another difficulty with case-law, well known to the profession, is this—that since its development depends upon the accidents of litigation, upon the casual exigencies of litigation, it being a matter entirely accidental when such a point will arise, it has had a very irregular and anomalous development

Now, it is perfectly obvious to every lawyer that many principles of the law are perfectly settled. As we saw in the paper last evening, it was said that in Lord Bacon's time it was his judgment that it was not necessary any longer to report any more than the ultimate results or judgment in many cases. Now, if in going through these many volumes of judiciary law we find a principle applicable to the civil conduct of men in the daily transactions of life, can any man give a substantial reason why that principle, clearly settled, with all its limitations and boundaries, cannot be put into writing, embodied in a statute, so that it may be accessible? So that, I insist, if any principle of the law is well settled, so as to be capable of being clearly stated, as a mere matter of convenience, it is expedient that it should be reduced to the form of a statute.

When we come to other principles we find conflicting decisions, so that the law on any given point may be said to be uncertain or obscure. If such points are met with, shall it be left longer to the accidents of litigation to settle it, or is it not the better wisdom, if the clear rule which ought to be prescribed and to obtain in such a case can be known, to settle it? Therefore, it has always seemed to me that the argument in favor of more extensive legislation could be very clearly stated, namely, that what is settled can be put in the form of a statute, and what is obscure or doubtful ought to be. Now, why should it be reduced to the form of a statute? One great reason is the unwieldy bulk to which our case-law has already attained, so as to make it more accessible. The want of convenience resulting from this bulk has come to be, as every lawyer knows, a positive evil. The report sets forth in detail some facts showing this, such as, for example, in one volume of New York Reports there were cited to the courts—probably the report not containing over one hundred cases—more than five thousand adjudged cases for its consideration.

Another reason why the law should be reduced to the form of a statute is to make it more certain and definite wherein it is now obscure or uncertain. Let us then recur to the

proposition as it stands here. The only proposition upon which we are to vote, viz., "That the law itself should, so far as possible, be reduced to a statute." It will be observed that it does not affirm that all law should be reduced to statutory form. It is careful not to say that, and no man who votes for this proposition votes in favor of a proposition that it is expedient to put all possible law into the form of a statute, only so far, as the resolution reads—"so far as possible," that is, reasonable, expedient or practicable to do it.

The President :

Your time has expired, Mr. Dillon.

Charles A. Peabody, of New York :

I move that Judge Dillon's time be extended ten minutes.

Rufus King, of Ohio :

I second the motion.

Carried.

John F. Dillon, of New York :

The modern tendency is in this way. Every lawyer who is familiar with recent legislation of Great Britain knows that for the last fifteen or twenty years it has been the practice of Parliament to bring together in one statute great and important topics of legislation. One of the most notable recent instances is the codification of the law of bills and notes.

Nor does this resolution say anything in terms in relation to a code, and wisely so, in my judgment, since there is no word known to the law which has more varying meanings than this word "code." One meaning which is attached to the word is that all law, that is, all statute law extant and all of the case or judiciary law extant, should be formulated and put into a code, with a view to render useless thereafter all preceding judicial reports and all preceding statutes. There are many who attach this idea to a code, and perhaps it is the popular idea. It is not in my judgment the proper idea, nor are these

propositions necessarily, nor even properly, involved in any idea of practicable codification. There are others who attach a more limited or restricted meaning to the word code, such, for example, as one of the most eminent writers and judges of our day, Sir James Stephen, who says, "A code ought to be based upon the principle that it aims at nothing more than the reduction to a convenient and systematic shape of the results obtained and sanctioned by the experience of many centuries." As was remarked by the gentleman who delivered the address this morning, a code does not mean anything revolutionary in the law. So far from this, that idea is not embraced in the code. It relates more to form than to substance. To show the variety of meanings which are attached to this word "code," I turn to what might be called the dissenting report, or the minority report, of a very estimable and able member of this Association, Mr. Cortlandt Parker, which has been placed before the meeting. Mr. Parker says in that report, "If the resolution means only to express a preference for a statute over other forms of law, many will assent to it." That is precisely what it does mean. That is, in the present state of our law, when principles resting in the reports have to be sought through so many volumes, it is expedient that wherever these can be clearly formulated and stated that they should be put into the form of a statute. "But," he adds, "the danger is, and that especially in view of the direction from which the resolution comes, that such assent may be entirely misinterpreted"—as if you were not to interpret this language in and by itself. It then proceeds, "What, then, is a 'code' in the sense in which it is favored by the friends of this resolution? Richardson says, 'A digested body of law;' Johnson carelessly says, 'A book of the civil law;' Worcester quotes from the *Penny Cyclopaedia*, and says, 'A code may be either a mere compilation of existing laws (though this is more properly a *digest*), or a new system of laws founded on fundamental principles.' Webster substantially adopts this two-fold definition." I therefore say that the word "code" is a word

which has no fixed and certain signification, and therefore this resolution has refrained from stating that it is expedient to reduce the law itself to the form of a code, because if put in that form it would be necessary to annex some particular meaning to the word "code." It may be that if this principle should be adopted in our legislation and applied to any given subject, such as it is in some statutes of the English law, it would be on that subject practically a codification of it. In the views of some that would be the proper idea of a code, and if this is a sound principle, as I think it is, as every man conversant practically with the administration of the law will feel it to be, that it is a great relief and advantage to have the law on any given subject, so far as practicable, reduced to the form of a statute. We all know what a great satisfaction it is to have a clear, adequate and well-framed statute provision in respect to matters which without such provision would be left in doubt and uncertainty, and therefore I ask, as a member of the committee, that we express by our vote our opinion upon this resolution as it stands, taking it in and by itself as expressing just what it means and just what the committee intended it should mean, viz., that wherever it is practicable to do so it is wise and expedient to put our law into the form of a statute, intending by this nothing more than the adoption of Judge Story's idea on this subject, who, when at the head of the Massachusetts commission, reported that it is expedient to reduce to a code those principles of the common law in civil cases which are of daily use and familiar application to the common business of life and to the present state of property and personal rights and contracts.

Henry Budd, of Pennsylvania:

Unless some one desires to make a motion to adjourn at this point, I have a few remarks to make.

Ignatius C. Grubb, of Delaware:

I move that we adjourn until this evening.

Henry Budd:

With the understanding that I have the floor when we reconvene, I will second that motion.

Carried.

Adjourned until 8 P. M.

Thursday Evening, 8 P. M.

The President:

The Association will come to order. The special order of the evening is the continuation of the discussion of the report of the committee, of which Mr. Field is chairman. At the close of the session this morning, Mr. Budd, of Pennsylvania, had the floor, and yielded to a motion to adjourn. He is therefore entitled to the floor now.

Henry Budd, of Pennsylvania:

It is, I think, a matter for decided regret that the language in which is couched the first resolution reported by the committee, and which we are now considering, is of so vague a character, being simply a limited statement: "*Resolved*, that the law itself should be reduced, so far as possible, to the form of a statute." If that were to be taken simply to mean what it was intimated by the gentleman who spoke this morning (Judge Dillon), could well be attributed to the words, namely, that where a legal principle had become so well established by decision or otherwise, that there was no further question about it, it should be written down, I take it that scarcely anybody would feel disposed to question the propriety of such a proceeding. If it be positively settled, though, what need of putting it in the form of a statute? We never will find it necessary to reduce to the form of statutes those cardinal principles of law which have come now to be regarded almost as axioms. To put them in the form of statutes would be simply a work of supererogation. But I take it, Mr. President, that

there is something more in this resolution than appears on the surface. If it be merely what has been suggested, why the nervousness exhibited this morning? Why the anxiety to advance and press through this resolution at this session? Why the throwing over and pushing aside of other important matters which of right have precedence of this subject? Why these two reports? Why the lengthy and able arguments, not only in this report, but in the one last year in favor of codification as such? Is it not because codification does lie behind this?—I mean codification in the ordinary common sense, the sense in which I take it the distinguished author of this report means it, namely, the creation of a body of law which will render useless, except for purposes of historical illustration and information, what has gone before. After which it might be desirable to know what legislation before was—but the code should mark an entire new era in the law of the land? If I am in error I hope I may be corrected.

David Dudley Field, of New York :

Do you wish to be corrected now?

Henry Budd :

If you please.

David Dudley Field :

You are utterly wrong. Not a word that you have stated is correct. The resolution means just exactly what it says, no more and no less—that wherever a rule of law can be stated in writing and put on the statute books, it should be. That is all.

Henry Budd :

Do you not go further?

David Dudley Field :

Not now. That comes up afterwards.

Henry Budd :

After I have finished, I presume.

David Dudley Field :

The gentleman need not flatter himself that we are waiting for him to get through to produce the other.

Henry Budd :

The gentleman does not flatter himself.

David Dudley Field :

This resolution means, as I say, just what it says. Then the question arises, and a separate proposition altogether, what is possible? That is all. Now, when we come to that, the gentleman may say, "This is possible and this is not possible." For my part I should think a great deal more possible, probably, than he does. But that is a question independent and which the Association will determine when we come to that; but this resolution does not go to that.

Henry Budd :

It then comes down to the definition of "possible," as given by the writer of this report. Taking the resolution by itself, I grant you that it means neither more nor less than what it says. Take it in connection with the report to which it is an appendix, and which is supposed to lead up to it, we find there a defense of codification, and I take it that my friend has at least admitted that this is the first step towards committing the Association to codification, which he doubtless believes possible, and which some of us may not. I shall, therefore, in spite of the disclaimer of the meaning at the present time, endeavor to discuss the question which lies beyond this, and which the gentleman has pledged himself now to bring up in proper time. We know, and scarcely a man here will deny it, that if this resolution goes through, the news will go out broadcast, at least through the state of New York, to the effect that this Association has approved of codification. That will be the impression. The report does not claim that it does not commit us to codification. The recommendation of the report says it would not commit the Association to any particular scheme of codification or to any form

of statute. If we are to have a codification, in the sense used by Judge Dillon this morning, all of us, I suppose, would welcome it. It would be an authoritative digest and useful. Now, passing then from this preliminary passage and coming to the main question, we have first, Could we get such a code, in the full sense, as would be a useful one? Is it possible, in the present state of the law of our country, to do so; and if we could get one, would it be as useful as going on at present under the common law? Could we get a code?

We heard this morning—in an address of great interest—of the history of several foreign codes. I would like to call the attention of the Association to the fact that it is one thing for a body of men appointed by the supreme law-giver, who is an absolute master of a great empire, to bring to that master a code which may be satisfactory to him, and which he, by his single will, shall put into force and send out to govern even the broadest dominion. But it would be a very different thing were that code, drawn by the most skillful lawyer this country can produce, to be put before the legislatures of the thirty-eight states. Would they allow a scientific code to go through without some objection or amendment on their part? Why, sir, we should have emendations offered by A, B and C, with a frequency in inverse proportion to the knowledge of the person making the amendment. I doubt very much whether we could get a satisfactory code passed. But suppose we can, what are we to get out of it? There are two things, I believe, especially called for in the law—stability and certainty. May we not have the same case of uncertainty arising after as before a code? The code won't execute itself, it must be interpreted. Explanations of the various clauses must be given, and we have no body of juris-consults to meet together and discuss problematical questions and decide them. There will still be law-making by litigation as before, and we know from experience that courts, even in the same state, have differed as to the interpretation to be put upon the law. There will then remain the same

uncertainty arising from the cause; and an additional cause, namely, that the law will be couched in a new phrase; and whereas now we are perfectly certain on certain points, there would be, by the new statement of the law, an opening of a new door for interpretation and for a chance of difference.

Now, as to the stability. We cannot hope that if we pass a code now in any one of our states, that code will receive the reverence which we learned this morning the Louisiana code has received. And for the simple reason that the Louisiana code is the code under which that state has been built up. It is the origin of its law; it is for the people in Louisiana what the common law is to us.

Now we may expect this tinkering with whatever code may be presented for adoption, and legislators, like individuals, when they get in the habit of doing a thing, will let the habit grow upon them. Just at present, legislators are not in the habit of tinkering with the law. Local regulations may be passed to be sure; but on the principles of law, as law, there are few legislators who venture to lay their hands, and when they do, there is generally such an outcry on the part of the public that their hands are stayed. Therefore, we have had the common law with a great amount of stability. Then, besides, there are two horns of a dilemma. Adopt the code and you have one of two things. You either stop the progress of law, if the code is to be regarded in this sacred way, or you have growing up alongside of the code a body of judge-made law, which seems to be so horrible to the gentlemen who have produced this report—law professing to have its origin in the code doubtless, but law made by extending the equities of the statute just as at present, or by resorting, as we have to do, to the old common law. Therefore, we have two systems standing side by side, or people turned out of court because the judge has no power to exercise the common law jurisdiction.

Now, look at the contrast between that and the common law—the common law with its own principles of growth. Using the aid we get from the civil law or any other law, let

us be as catholic as possible in our use of law ; if we find anything admirable in the law of the Hottentots, take it ; improve the law in any way or let it grow of itself until it is certain that the tree can grow no higher. Statutes can correct evils. They can correct that in which the common law shows itself to be insufficient. It is not necessary to root up the common law and substitute a code. Therefore, Mr. President, it seems to me that this Association should pause long before it takes even the first step towards saying to the people at large, that we, a body of experts—and I think we have a right to the title—in the common law, propose to cast it out as having done its work and welcome a new master whose rule we know not of. We may learn by bitter experience that the new master is not as good as the one we have cast out from us.

W. Morton Grinnell, of New York :

Mr. President, I should like to say a few words in reference to the practical workings of a code in the country which, of all modern nations, has had one longest and with which I am familiar. I refer to France. I should as soon think of asking a Frenchman if he considered a grammar or dictionary advisable and useful, as of asking him if he considered a code useful and advisable.

In the earlier stages of civilization neither existed, but no one would dream of abolishing a grammar or a dictionary, and no one would any more dream of abolishing a code in a country where one has existed.

What is practically said to the people in our country is—obey the laws or you will be punished by imprisonment, fine or damages, as the offence is criminal or civil. And when the people naturally ask, where are the laws, that we may obey them, we are constrained to reply, “In some six thousand volumes of reports.” As no layman has time or inclination to examine six thousand volumes of reports of conflicting decisions and varying opinions by more or less competent judges, he remains ignorant of the law, groping along in Cimmerian gloom

and with the sword of Damocles, in the shape of a lawsuit, constantly suspended over his head.

In France and other continental countries this is not so. The law is set forth in one volume, which everyone, layman and lawyer, possesses, and with which he is more or less familiar. It is a common experience, upon entering an office or shop in France, to see the manager or proprietor take down from the shelf a well-thumbed volume of the code and consult it as to any doubtful point of his business or trade. According as the law runs, so he conforms his conduct, and thus trivial and idle lawsuits are obviated. Where complications of law and fact exist, where the code does not provide for the particular emergency (as is sometimes the case, every code partaking of man's imperfections), a lawyer is consulted and a suit begun; but it is then a suit necessary and useful and such as no human ingenuity could avert.

The result is obvious; litigation is reduced to the narrowest limits. In a country of 40,000,000 inhabitants, there are about as many lawyers as in New York and Brooklyn with 2,000,000, and a relatively small number of lawsuits. The same remarks apply to Prussia, Austria, Italy, Spain and Belgium, although I cannot give the exact statistics from these countries.

And are we to always remain so far behind all civilized nations, England excepted?

Either we have or have not laws. If we have, they can be codified; if we have not, then we are in a state of barbarism.

I confess I cannot understand the Fetish-like worship we have for the English common law. When we separated from England we erected the grandest monument to liberty time has ever seen; but that has apparently exhausted our efforts and we have since been living under the tutelage of England. We have adopted her ideas, theories, principles, customs, fashions, literature and *laws*, and it seems as if we were never to emancipate ourselves. Have we no force, nationality or originality? Yes, we have, and greater than

that of the so-called mother country, but we are too diffident to give utterance to them. Where we have asserted ourselves, as becomes us, in law, it is due to the untiring and heroic efforts of a distinguished member here present and the reforms he has inaugurated have been adopted by England.

We are so imbued with English ideas and English prejudices, that we take their *dicta* as immutable truth, and firmly believe that their laws are the best any nation has ever had; that they conceived and instituted liberty.

The facts, if we glance at them, are repugnant to our good sense.

As a learned member stated, trial by jury originated in France, not England, and was only brought into that country by the Norman conquerors. When the primitive rights of man were timidly set forth in the *Magna Charta*, the cities of Northern Italy were emancipated from feudalism and enjoyed the rights and liberties of Republics.

When the constitution of Clarendon was framed, the cities of Germany and communes of France were granted greater privileges than existed in England, and so on during the ages. It is true that a reaction later took place, and when France, Spain, Austria and Italy drifted into absolutism, England was relatively free, but since then England has scarcely progressed, whilst France inaugurated the era of liberty and equality among men by her great revolution, the principles of which were rendered fixed and immutable by the code.

We properly inaugurated the era of liberty, and France introduced it in Europe. England is not then the fountain and preserver of liberty, as we are fondly taught to believe, and it is a sorry anomaly that we, who gained our freedom with our best blood, should have clung and still cling to her feudal customs, institutions and laws. No, it is for us not to follow under the ægis of England in our reforms, but to precede her and all nations, as befits us.

We have taken one step, let us not halt there. We, as a privileged class, should lead reform, not have it forced upon

us. And it is being forced upon us. We see in all the large cities, notably New York, merchants, bankers and tradesmen forming arbitration committees and other associations to obtain the justice the law denies them. Can we allow this to continue? No. The existence, the position, the dignity of the law and its ministers rests with us; depends upon us for vindication and redemption. If we neglect this we shall be ignored or condemned. If we accomplish it, we shall have a more lasting memorial than brazen tablet or monumental shaft.

E. Whittaker, of New York:

Mr. President, I have been very quiet during all the sessions of this Association which I have attended. I have listened to the suggestions of reason for the last two or three years. Last year I voted for reducing the common law to a statute, but I said nothing. Now sir, I, for one, if I were a young man, would wish the law to be reduced to the form of a statute. I would not want to spend my life in going through these "myriads of single instances," and mispend my time in that way, when I wanted to know the law on any given subject. I understand from what has been said that there are over six thousand volumes of law reports, that there will soon be ten thousand volumes, and it was estimated by Judge Dillon last night that in a certain number of years there would be fifty thousand volumes of common law reports. If there is anybody wise enough and willing to put this law in the form of statutes, it would relieve many generations yet to come from this immense labor that they otherwise would be burdened with.

I heard to-day, from the report of one of your standing committees, suggestions approving of the establishment of the whipping-post for wife-beating husbands. If you turn to the common law you might find that a wife may commit larceny in the company or presence of her husband, and she may plead coercion, and the law presumes coercion, and the husband may be sent to prison for larceny, while his infant

children cannot set up that defense. If you establish the whipping-post on the one side for wife-beating husbands, I hope you will strike out that portion of the common law which sends the husband to prison for the larceny of the wife, because he is presumed to have coerced her, and by the common law he could not be heard upon the matter. I do not look upon the common law as the perfection of human reason. When I read Blackstone, I did not believe it. I do not now. It was the law of our rude Saxon ancestors, who had, if you turn to Blackstone, trial by the water ordeal and trial by the fire ordeal for crimes, and Professor Semmes did not tell us that that was drawn from the Roman law, but when William the Conqueror came into England and took it, he introduced trial by wager of battel, in civil cases as a civil procedure, in order to determine the title to real estate, where the parties fought from early morn till the setting of the sun, and if there was no victor, the land remained with him who was in possession; but if either spoke the word "craven" before the set of the sun, he lost his estate and was forever afterward disgraced. I mention this to show what a fine appreciation of the administration of the principles of justice our early Saxon ancestors possessed. The trial by wager of battel was continued until twenty-five years after Hendrick Hudson sailed up the North River. Under the first part of the reign of George III there were in the criminal code of England one hundred and sixty crimes punishable by death. What is the state of England now as to capital punishment, and what is it in most states of the Union?

W. H. H. Russell, of New York :

I would like to know what capital punishment has to do with this question?

E. Whittaker:

One moment, if you please. Our friends have lauded the common law. I was pointing out to you what the common law is and what it is derived from.

The President:

The chair thinks that the gentleman is in order and he will please proceed.

E. Whittaker:

I should want some laws struck out of the common law and put in the code, if you make one. Now, as to this matter of codification. In the first place, I suppose there would be some ambiguity in the terse expressions of a code, but isn't there a decided idea of benefit? It would settle a good many questions which are not settled now. Why cannot a judge now evolve law from his inner consciousness when he has not the mandate of a statute? He only has to look for a decision that will agree with his. I am quite sure he will find it among these countless decisions, and then he may say, "yes, that is the law," and may decide it accordingly. We would have the benefit of having all mooted laws disposed of, and the judges confined to the statute in making their decisions.

Mr. President, I am not only for the resolution moved, but I am for codification in general, from beginning to end, all through.

Henry Wise Garnett, of the District of Columbia:

I suppose, sir, that I ought to rise with considerable hesitation, I might say trepidation, when I consider that because last year on this floor, thinking myself favoring something in the line of what the gentleman is agitating—that is, statutory law—I said that I advocated statutory forms of pleading. To my great surprise, the learned gentleman who closed the debate accused me of making much of what he said was a horrible monster. Indeed, he called on the Chief Justice of England to send me to the Yellowstone Park, in Colorado, to a place he said was to be known as "Pleading Park," in order that I might there meet those ancient worthies, the old judges of England.

Not satisfied with having banished me to that unknown region, for what he said was ignorance of the literature of the law for the past twenty years, after I had departed, he then turned upon my native place, and began to challenge the right of the District of Columbia to be heard upon this proposition. He not only demolished the city of Washington, but he sowed the place thereof with salt, and said that it was altogether an act of effrontery that the District of Columbia should come here anyway and discuss any question; that it had the worst administered law in the United States.

Therefore, I fear, sir, that I am rushing upon my fate when I rise to discuss this question. Ignorant as we are, benighted as we have been, in utter darkness, as the gentleman considers us, we have tried this matter of codification a little down there. There have been no less than four codes prepared for the District of Columbia, and they have been presented, some to the people, some of them to Congress, and attempts have been made to have them adopted. On one occasion, dating as far back as 1854, one was prepared, and an article appeared in the newspapers from one of the people—for I understand that we are legislating now for the people—and, in fact, a gentleman has just told us that in Paris the people are their own lawyers. In this country, I venture to say, those books called “Every Man his own Lawyer” have not been a success, but in Paris, it seems, it is otherwise. An article appeared in the paper, as I say, from a humble citizen of the city of Washington, who went on to detail his delight and pleasure at knowing that at last he was to find out the law. He said that he eagerly bought one of these copies of the code as soon as it was published, and commenced to study it with avidity. “Mr. Editor,” said he, “I had not read two pages in that book before I found out that a man may do what he pleases with an *Interesse Termini*. Sir, my hopes were dashed to the ground. What, in the heavens above or the earth beneath or the waters under the earth, is an *Interesse Termini*?”

That was in the code prepared for the city of Washington.

Now, sir, during my travels in the wild West, during my period of banishment, I visited California. We have heard of California, I think, upon every occasion when this subject has been discussed. It is blessed with a code. It has the whole code and all the code. There the people for whom the code is made know the law. How comes it now, sir, that our Supreme Court Library, at Washington, is burdened every year with large numbers of amendments to this code, so that in some instances the amendments to the code of California are larger than the original sections amended? How comes it that the reports of California are burdened, and a large portion of them taken up entirely with decisions, construing this plain law made for the people? I am as much in favor of simplifying the law as anyone on this floor. I shall vote for that resolution, after an amendment which I shall offer at the close of my remarks; but, sir, I believe that this matter is like individuals, that it is like nations, that it grows gradually. The time has come, possibly, for a large amount of statutory law to be passed. If you call that a code, I say yes. But I do not believe in making a suit for the body politic and fitting the body politic to it. A gentleman has compared the common law to a suit made for a boy and which has been continually pieced and patched to fit the man the boy has now become. It strikes me that possibly in these states, as in California, where you have a ready-made suit and the body politic has to fit it, that the garment itself may appear equally or more diversified. Do not let us make a body of law that is to fit everything, for we cannot do it. After all, this matter of special instances has got to be passed upon. I do not think this committee have presented this thing fairly when they say, "We go for legislative law, you go for judicial law." The legislatures pass the law, the judiciary expound the law. Now, sir, I am in favor of this resolution with a modification, and I offer the modification for this reason. In 1884, the gentleman who closed the debate offered this apparently innocent resolution, "That a select

committee of five be appointed by the President to consider and report at the next annual meeting whether the present uncertainty and delay in judicial administration can be lessened, and if so, by what means."

Now, if that meant anything at all, it was the delay in the administration of the law; and I fail to see how that has grown into codification. The gentleman says this resolution means nothing except what it says, and some who advocate it tell us that it does not mean codification. Therefore, let us pass this resolution with the following amendment, "This Association does not, however, favor or oppose what is known as 'codification.'" Put that on to the end of the resolution and then let us pass it. Sir, there are many lawyers in this country that don't believe in codification. The whole kernel of this thing lies in these words, "as far as possible." And let us express ourselves clearly and distinctly, so that there can be no doubt in any resolution which we may pass, as that resolution has already grown from judicial administration to the question of whether the whole body of law shall be codified.

Henry Budd, of Pennsylvania :

I second the amendment.

Herbert B. Turner, of New York :

I am very glad to hear that amendment offered. The resolution appears at first sight to be a particularly innocent one. What is it? "The law itself, so far as possible, should be reduced to the form of a statute." Suppose we pass that innocent resolution without any amendment, is it to go broadcast over the land that the American Bar Association is in favor of what is commonly known as codification, and will the members here and there have to meet that statement and be obliged to explain and say, "No, there is no possibility of reducing the great body of law to a statute, and therefore we do not favor codification?" What inference is to be drawn from this seemingly harmless resolution?

Does it mean anything more than appears on the surface, or is there a sting underneath? Is this resolution something that is to be used for some special purpose, and to be quoted as an endorsement of some codification scheme, when we do not mean it? So I am very glad to hear such an amendment offered. You may recognize it or not, but the bar of this country is divided on this question of codification, and it is not well that the Association should meet here, eighty members present, and by a vote of perhaps forty say that the American Bar is in favor of codification. Why, we all know that in fact it is not. I might just as well say that the American Bar is opposed to codification. The Bar is divided on this question, and many men have not made up their minds. But who is going to do this reducing to a statute? We have undertaken, as an Association, to point out a good many things that ought to be done. I suppose there are men in different localities going to try and get certain things done as we have advised. It is a good thing, we may say, to reduce the body of the law to a statute, but who is going to reduce it? Do you tell me that it has been so reduced? I deny it. Let us come right down to facts. We have had pending in the New York legislature every year for a long time past what purports to be a substantial codification of the law. It has been examined and it is in some respects, and in some points, a statement of the law; but in many respects, and in many points, it changes the law. One great trouble in this whole matter of codification is, that the men who draw up codes color them according to their ideas of what the law ought to be. Why, if a man is an attorney, it is natural. The human mind is so constituted that it can scarcely be otherwise. If a man's clients happened to be largely religious corporations, he would favor religious corporations, and his code would not hurt a religious corporation at all. If a man's practice ran in the way of trusts or trustees, trustees would not be put under any too severe liability by anything in the code which he might draw. If a man's practice ran

in the direction of commercial law, the commercial men would not be severely dealt with in his code. In the same way, if a man's practice happened to lie in the line of great corporations, and if elevated railroads and other institutions happened to appeal to him, the law would not hurt elevated railroads any more after his code was enacted than before. Now, all this shows the inherent difficulty of getting anyone to carry this scheme out and reduce the law to a statute. We are going to favor something which cannot be done. What has been the result of the attempt here in New York? We have had what is called a code before our legislature year after year. It has been vetoed by governors. It has been hastily passed by legislatures that did not know what was in it. It has been investigated by lawyers, and it has therefore been opposed on its merits; and it has year after year been rejected on its merits in the legislature of the State of New York. Now, sir, I presume that after this it will come up again in the legislature of the state of New York, and I suppose that all those mysterious influences which are brought to bear on legislatures—properly, I mean, for we can all do it, I have done it myself—all those influences of friendship which can be brought to bear on legislatures will be brought into use in the effort to change the law of the state of New York and to adopt that code. And I suppose that those who know what that code means, those who have studied it with great care and infinite labor, and who, as a result of such care and labor, can take that code and show you a mistake or a change in the law upon every page of it, I suppose those men, having opposed it all along, will have to go on and oppose it again, year after year, until perhaps the legislature will say, "We are tired of this." But I do think that it is just as well that this little, innocent, crafty resolution now before this Bar Association be voted down. Let us have nothing to do with this fight that is going on in the profession. I came up here from New York and joined this Association at this time, thinking it would be an excellent thing to come

here every year and see my valued professional friends from other parts of the country, and consult with them in our mutual interest, but now we are going to bring in this firebrand. The same men who have always been active in New York, who have always voted together in our city Bar Association, numbering at least eight or ten, are here now with this firebrand, trying to make the same fight that we have had over it in New York. Let us recognize the fact that we differ on this point. This Association can never agree upon this point. Recognizing that, let us put out foot down upon anything that points towards endorsing codification, and take no action on the subject at all.

B. A. Willis, of New York:

I join in the prayer that has just been uttered by my friend from New York, "Let us have peace." Private ills and grievances do not concern this discussion, nor are the merits and demerits of what is known as the Field code here involved. I will content myself simply by stating that, out of the thirty-three hundred sections in this code but three hundred have been subjected to criticism; that while Mr. Turner pronounces it crowded with errors on every page, the most illustrious jurists in the whole civilized world, representing the legal profession in all the greatest of nations, have yielded their homage to its author. Now, Mr. President and gentlemen of the Association, why do we confront this amendment which has been proposed to defeat the just expression of opinion of this Association? He says, "Let this resolution be amended in such points that the Association is either opposed to or friendly to codification." That would defeat the just intent of the resolution. Now, I differ from some gentlemen. Codification has a meaning. Codification is an authoritative consolidation of existing law, or of a part thereof, in its leading divisions, giving it coherency and unity of purpose and making it the clear expression of just and comprehensive rules. Now, this committee have determined that in so far as

this can be done, or, in equivalent words, in so far as the law can be reduced to the form of a statute—a statute which is a code—let it be done. Now, shall we resolve that we are in favor of reducing the law, so far as possible, to the form of a code, at the same time we are neither opposed to nor in favor of codification? In other words, let the word *idiot* be written on our brows. While we are in favor of it, we oppose it. This is unworthy of gentlemen representing a learned profession. Gentlemen, in a free country like ours, people should know, first, the law; second, the scope of the law-making power; and third, the scope of the judiciary itself and the limitations that should be imposed upon it. In a country where the people are the sovereigns, not knowing these things is to condemn ourselves as unworthy the blessings we enjoy under a Republican form of government. All the excellencies of the common law itself consist in the successive codifications which constitute it. The code of Alfred the Great, the code of Edward I, the code of Edward the Confessor, the institutes of Bracton and of Coke—which have the force of a code because they received judicial sanction—all these constitute the excellencies of the common law itself. Now, what we propose to do is to go on and complete their unfinished task. We intend, so far as we can, to dispense with what is called judge-made law, which is *ex post facto* in its operation, which does not determine according to a comprehensive rule but according rather to technicalities, and which in many instances places a man upon the bench who has during his whole life pursued a specialty, and then he is expected to expound every principle of law that comes up before him. In conclusion, let me say that I believe the judgment of this Association is in favor of the resolution that has been presented.

Stephen P. Nash, of New York :

I had intended, Mr. President, to have offered a resolution, by way of amendment or substitute to that which has been reported to this meeting, in the same line as that of the

gentleman from Washington, and perhaps he may be willing to accept my substitute. I will read it before making a few remarks in the line of its argument :

“*Resolved*, That in the opinion of this Association the subject of codification or of reducing the general body of the law to a statutory form is irrelevant to the subject of delays in the administration of the law, and that accordingly the majority and minority reports from the special committee be received without further action thereon.”

I listened, Mr. President, with a great deal of pleasure to the opening address of the honorable member from New York in support of the report of this committee. I was delighted to hear again, after the lapse of so many years, Blackstone's celebrated definition of the law as a rule of action, but it occurred to me again, what has all this to do with the administration of the law? We are suffering in this nineteenth century in the United States with an accumulation of business in the courts which they seem unable to despatch with sufficient celerity, and this Association has now for the second time considered what means may be suggested and recommended to remedy that evil. Among others, it is suggested that incompetent judges are to a certain extent the cause of the evil. That certainly has nothing to do with codification, for if you only make the judgment of incompetent and ignorant judges final, without appeal, we should be able to dispose of our legal business with great rapidity. So we come next to the question, shall we allow appeals from decisions of the first tribunal? And then we are involved in the question as to how the appellate jurisdiction shall be regulated, so that appeals may be heard without too much delay; and so certain resolutions have been adopted all bearing on the question of the administration of the law in cases which assume that a lawsuit has been gained and is awaiting determination. Now then, when you have treated of various evils, including, I believe, the loquaciousness of lawyers and the weakness of

judges in sitting upon them, they are all to be cured by one resolution which asserts that the law itself should be codified; I will read: "The law itself should be reduced, as far as possible, to the form of a statute." The learned gentleman who opened the discussion upon this report said that that did not mean codification. The gentleman who has just favored us with his eloquence, said that it did mean codification. The supporters of this majority report may settle this matter among themselves as they choose, but whether it means codification, or simply the passing of statutes from time to time, in respect to which it would appear from the address of our learned president at the opening of this session that the legislatures had been dilatory and remiss; if it simply means that we want more statutory law than we have, then it seems to me that a great many of us are justified in feeling that we have quite enough of it. The learned gentleman who opened this discussion, Judge Dillon, said that the Statute of Frauds in its application to litigated cases, in its construction, etc., had led to so many decisions that it took three large octavo volumes to give a fair representation of the result of the conflict of opinion in the courts in the application of that statute. Well now, what does he propose to do? The argument of this report, in order to make the topic at all suitable and relevant to the question of the administration of the law—the argument of the report would seem to be that if you put all law into statutory form you will lessen litigation, you will have no suits which will delay the action of the courts, everybody will be his own lawyer, and will carry in his pocket a code of between three and four thousand sections. But the Statute of Frauds is a code as far as it goes. It is a portion of the law of England, reduced to statutory form about two hundred years ago. It has been adopted by every state in the Union, I think, except perhaps Louisiana, and it has been interpreted over and over again, and still gives rise to litigation arising out of its construction, so that there is hardly a day that we do not

find some cause which is determined upon a construction of the Statute of Frauds. The Statute of Uses and Trusts, which was enacted as a portion of the Revised Statutes in 1830, a revision in which some of the ablest lawyers that our state ever produced took part; your honored father, Mr. President, with Mr. Wheaton and Mr. Spencer, was engaged in it; that statute was put in language which would appear to an ordinary reader as accurate and simple as possible. That statute has been in force fifty years and over, and it is only within the last year or two that the Court of Appeals have decided that the two lives in being during which estates might be tied up, might be two lives other than beneficiaries under the trust.

This brings me to my conclusion, that unless the majority of the committee are prepared to say that statute law does not lead to litigation, then the whole discussion is irrelevant to the question how to prevent those delays in the administration of the law from which we are now suffering. I think therefore this discussion is irrelevant. It seems to me that the question of codification ought not to be pressed upon us as an abstract one, that the question always is, is any particular code which is presented desirable? That is the true question which ought to be brought before the profession whenever the time comes for considering it. All the rest is mere speculation. We are all agreed that whenever the law is obscure, it is desirable to have it made plain, and it would be for the benefit of the profession and for the benefit of the citizen, if the law could be simplified in a scientific manner, but the question as now presented is purely an abstract one and has no place whatever in this discussion. The question now before us is: What practical methods can this Association suggest to relieve the community and to relieve litigants from the evils which we now suffer in the administration of justice? I move my amendment as a substitute for the one contained in the report and for the amendment offered by Mr. Garnett.

Herbert B. Turner :

I second it.

Edwin P. Green, of Ohio :

I am very glad that this resolution has got into this Association at this late day. It has given this Association a chance to become acquainted with certain eminent and eloquent gentlemen of the state of New York that up to this time we never have known except by pamphlets. The last speaker says he cannot conceive how the question of codification, or of reducing the law to a statute, can in any way have anything to do with the delay in the administration of justice. That very likely is true in an enlightened state like that of New York, which has a bar which we have always supposed led that of all the world. I have always believed it until to-night, when I learned that in the state of New York they haven't the ability to reduce the laws to a code. I know of an instance in Ohio of a case that was tried before a judge not very well up in the law, where the lawyers spent two days arguing a proposition and cited two hundred and sixteen authorities to the bewildered judge. Finally, he came to a decision and decided the case. One side said, "Why, yes, that's the law." The other side said, "Well, that satisfies us; it's what we always knew." Now, if that conclusion had been stated in a code, all that time and labor would have been saved. That section of the code would have been read and that would have settled it. That is only an illustration of what we have day after day in the West. It is not New York alone that is considering this matter of a code. The question is: Is it advisable that the law should be reduced, so far as possible, to the form of a statute? One gentleman says, "Why, if every man knows the law, reduce it to a statute." Now, we have some people in Ohio who are not educated lawyers. What is the objection to codification? It is not the question of the few that are here, and it seems to me that it is a proper step for this body to take to recommend this matter, especially in view of the fact that every bar association in the country for the last two years has been discussing this subject. I think the gentleman who addressed us this morning (Mr.

Semmes) is entitled to more weight than any of us who have been born and brought up under the common law. He was educated at Harvard—and many of us know that if he was educated there he must be one of the best lawyers. He practised law in the North, and then went South to Louisiana and has since practised under a code, and of his experience under a code he told you this morning. Is he in favor of the common law? No. He has had experience under both systems. Our friend from the District of Columbia has told us something in relation to the many amendments, etc., there were to the code in California. I want to say, sir, that Judge Belcher, who was for years on the supreme bench in California, wrote me as follows: "When a dozen years ago it was proposed to adopt codes here I was not in favor of it. I considered it a somewhat risky experiment. The codes came, nevertheless, and we have been acting under them since January, 1873. Now I should be unwilling to give them up. Our civil court code serves us well. The profession and the people generally are well satisfied with it. It solves a great many questions which would be in confusion without it. You will probably never regret it if you adopt a similar code in your state." Now, then, let some men who have had this kind of experience discuss this subject. We want a discussion of whether the law ought to be reduced, so far as possible, to the form of a statute. If it should be, let us say so, and then we can try afterwards to find somebody that can reduce it.

John Frankenheimer, of New York:

Mr. President, it is with some hesitation that I venture to address this Association upon this question. Were it not for the fact that I have been actively engaged in the contest which has been waged in this state over the Field Code, I would not rise now. But, sir, I protest against that Code being lugged into the discussion of the question which is before us now. The question is whether the general principles of the law, as far as possible, shall be reduced to a statute. I

have never yet met a man who was opposed to any code who would support such a resolution. Every man opposed to any code maintains that the common law is such a wonderful creation of all the judges and lawyers that have existed, that while we are supposed to know it and every man is supposed to know it, it cannot be reduced into the comprehensive form of a statute. That is what every man who is opposed to any code has maintained before the legislature of New York, and in this connection I need only refer to such prominent men as Professor Dwight and James C. Carter, of New York. The fundamental question to be discussed, and the question involved in this resolution, is, after all, codification. What is codification? What do we all do when we study law? Do we not refer to codes? What is Blackstone but an unofficial code? What is a digest but an unenacted code? All we ask for is that what can be put in the form of text books should be re-enacted by the legislature: with this important difference, however, that while the code will be a re-enacted digest, it will also do away with all inconsistencies that arise from conflicting decisions and give us a settled rule, and do away with those obsolete principles that still flourish in the law because they are concealed in obscurity. But we are told that the common law would lose its elasticity, that it would become inflexible, in the form of a statute. I shall refer the gentleman from Philadelphia to the opinion of four living judges in England, who say that if by elasticity is meant judicial discretion to decide new cases as they arise, codification will not hamper the exercise of such discretion as the judges now possess; but that, in fact, "the elasticity so often spoken of as a valuable quality, would, if it existed, be only another name for uncertainty." (The speaker here quoted at length from the Report of the Royal Commission on the Criminal Code of England, composed of Lord Blackburn, Mr. Justice Barry, Lord Justice Lush, and Sir James Fitzjames Stephen.)

That is the opinion of four eminent judges of England, who make the law which the gentleman from Philadelphia will

quote as authority even in his courts. But we are told that so far as the principles of the common law are concerned we all know them. Now, sir, I have taken the trouble to refer to the decisions of our highest courts upon four elementary questions of the law. The first is in reference to sales—the question whether upon a sale of goods with express warranty of quality the buyer must return the goods in case of breach of warranty, or can keep the goods and recover on the warranty. This question was only definitely settled by our Court of Appeals in 1885, in *Briggs vs. Hilton*, 99 N. Y. 517. But as early as 1873 the question was discussed in the case of *Day vs. Pool*, 52 N. Y. 416, and there the majority of the court held with the court which finally decided the question in 1885, but three of the judges, among them Chief Justice Church, were not certain that that was the law. It took our Court of Appeals ten years to settle that elementary principle of law. Then there is a question in the law of principal and agent—how far is a principal liable for the wilful wrongful act of the agent done in the course of his employment. That question arose in 1872 in the case of *Isaacs vs. The Third Avenue Railroad Company*, 47 N. Y. 122, where Mrs. Isaacs was hurled off the rear platform of a car by the conductor, and the Court of Appeals held that the company was not liable for the act of the conductor. Two years later a gentleman named Shea (62 N. Y. 180) was hurled off the front platform of a car by the driver, and there the court held that the company was liable, the only difference being in the name of the party injured, and it being the front platform instead of the rear. The discussion went on until 1878, when it was decided, in the case of *Mott vs. The Consumers' Ice Company*, 73 N. Y. 543, that it was entirely immaterial how the agent acted, whether negligently, wantonly, or wilfully, that the only question was whether he had acted in the transaction of the business of the agency, and it was not until that year that the court finally established the principle that the master was liable for the wilful

act of the agent. Again, take the law of partnership. In 1884, in *Cassidy vs. Hall*, 97 N. Y. 159, our Court of Appeals decided that a man loaning money to a firm and stipulating for a share of the profits for its use was not a partner. Just ten years before, in 1874, in *Leggett vs. Hyde*, 58 N. Y. 272, the Court of Appeals, all concurring, said that it was too well settled to question the doctrine that a man who advanced money to a concern and took a share of the profits was a partner. Now, this very question, decided by the Court of Appeals in 1885, was decided by the vilified Field code years before. The question involved in the Isaacs case and in the Mott case, was also decided, identically with the last, by the codifiers, in 1865, and most wonderful to relate, the codifiers in 1865 saw the expediency of what our Court of Appeals saw in 1884 in reference to the law of partnership; and they suggested the very change which our Court of Appeals in 1884 suggested, but they appended a note and said, "This will change the law." Now, that is the difference between code law and judge-made law. The Code Commissioners tell us it will change the law, and our Court of Appeals change the law, while ostensibly merely declaring the law. I have nothing further to say except that I maintain that the principles of the law are uncertain, even as to matters that relate to the ordinary transactions of life. What a code would do, would be to settle those questions which are unsettled and do away with the obsolete principles that need only to be held up to the light to be disregarded. A code would at least give us something fixed and definite amid the fluctuating sea of our flexible common law. It may not enable every man to be his own lawyer, but will enable every lawyer to know some law. I hold, therefore, with Frederick Pollock, that a bad code is better than none at all.

W. H. H. Russell, of New York :

I am opposed to the proposed amendment and the substitute. The gentleman who offers the proposed amendment and the

substitute is one of the first to oppose this plain proposition, supported by the learned committee, and reported by four, with only the dissenting voice of Mr. Parker, who says, "If the resolution means only to express a preference for a statute over other forms of law, many will assent to it, but the danger is, and that especially in view of the direction from which the resolution comes, that such assent may be entirely misinterpreted." Is there any member of this Association that says that the law cannot be reduced to the form of a statute? Cannot the principles of law be reduced to the form of a statute? I will place against the opposers of this resolution the opinion of Joseph Story—which was referred to by Judge Dillon—in 1836; the opinion of Mr. Justice Miller, of the U. S. Supreme Court, which appeared in the *American Law Review* of January and February last. Judge Miller states that he is in favor of codification. Then there is Thomas M. Cooley, one of the best constitutional writers in this country. He favors the very question brought up in the discussion heré to-night, in an article which appears in the same issue of this magazine. Now, is there any member of this Association—with the authority of my learned friend upon my right, that there is no committal by the passing of this resolution, that the law, so far as possible, ought to be reduced to the form of a statute—who will vote that it cannot be done? Some gentlemen say they are opposed to this because it proposes to codify the common law. There is no pretense of that sort, and I say, after the matter has been entrusted to this able committee, and after that committee have obtained the opinions of members of the bar all over the country, and after the very able address of the distinguished gentleman from New Orleans, that this Association ought to adopt this report unanimously, and I hope they will do so.

Nathaniel W. Ladd, of Massachusetts :

It seems to me that in the beginning this committee assumed a greater task than was committed to them, when they

undertook to bring in codification as an element of discord into this Association on the resolution which was entrusted to them, and which they were asked to report upon. I think, Mr. President, that is one reason why we should fight against the adoption of this resolution. I think also that the language itself is ambiguous and has upon it two different and antagonistic interpretations. Can we expect any agreement is likely to exist in regard to three or four thousand sections of code which we are asked to endorse, if we cannot agree as to the meaning of these few lines? If we adopt any resolutions, they should be so positive and clear and so free from ambiguity that there can be no doubt as to what we mean. We are divided upon this question, and I believe it an unwise thing, therefore, for us to pass this resolution. I believe this resolution should be voted down because the authority given to the committee does not extend far enough to cover this ground, and also because it is ambiguous; and if it is hurried through to-night, and we are forced to vote upon it, I hope it will be voted down upon its merits, because we do not believe in codification. I think also that this resolution should lie over for another year as a mark of courtesy to the gentleman who prepared the minority report of the committee and who is not able to be here at this session. Even in New York, where the code has existed, there is a very great difference of opinion as to its utility, but in our common law states there is very little difference of opinion as to the utility and advantages of the common law system. It commends itself to every careful thinking lawyer. It has been the means of growth of our profession. I think I am justified in making the assertion that if we proceed under a code, we never shall in the future produce such giant intellects as the profession of the law has produced in the past. The code is belittling to the legal mind. It cuts aloof from principles which tend stronger than anything else to develop the human intellect, and tends to reduce everything, so that every man, however incompetent in ability and intellectual power, can

handle it. Would it be possible for any man to turn to a code of three or four thousand sections and find out what the law was on any particular point upon which he should wish information? I think not. The law would not be certain to the common mind even if you had a code. Burke thought that the common law was comprehensible to the legal mind. There was no code in his time. There was no code in England except the old barbarous code, that has been referred to, where cases were settled by the wager of battel, and as civilization advanced, that was brushed away. At the time that Burke flourished, the common law existed in all its grandeur and beauty, and he said, "Would it be declared by any lawyer to his client that the law was uncertain? No, it would not be so declared by any man who had a rag of a gown left upon his back or a wig with one tie upon his head." Mr. President, we have discarded the gown and the wig, but I trust we have what he meant to ridicule—such ignorance as compels us to admit that the common law is unsettled, not discarded. No, Mr. President, when we get ready to die then let us make a code, but not until then! No code existed in Rome when she was growing, and there is nothing worth looking at in Roman history since a code was enacted, but the eyes of the whole world are turned in admiration to the deeds of Rome when she was growing up.

Austin Abbott, of New York:

Mr. President, I desire to suggest an amendment—verbal, perhaps, though I do not so regard it—which I think will meet the approval of many members, and in connection with and in support of it to mention one aspect of the subject which has not been considered in the discussion this evening. "So far as possible" is a very broad but an indefinite phrase, and in connection with the words "the law itself" it leaves, in its broadest significance, nothing whatever to rest in judicial rule, not even the rules of procedure, not even the rules of court. I should like to suggest to the committee whether

it would not be wise to express the resolution in some such way as this, "That the law, so far as in its substantive principles it is settled, should be reduced to the form of a statute." If I read the signs of the times aright, we are coming towards the end of the respect for precedents which not only influenced, but in former times controlled, the profession and the bench; and because of the abundance of precedents, the authority of precedents is breaking down by its own weight. There is nothing a lawyer likes, next after a retainer, so much as finding a case in point, and although now we have to range the reports of the whole country, whereas thirty years ago we only looked at the reports of our own state, and although reports are multiplying so that their authority is breaking down by the mere mass of them, yet we resort to them still more than ever as materials for reasoning; and in proportion as they lose their authority as precedents, they become valuable as material for reasoning, suggestive of the sources of argument. Now, in the future, if I am right in this, we need for success a better grasp of definite general principles, clearly appreciated, accurately stated, as the grounds from which the judicial results are to be reached. This discussion has been treated by some of the speakers as if this was a proposition to substitute statute law for case law. It strikes me that it is rather the proposition to add the sanction of the statutory authority to case law, so that the result shall be doubly law—case law crystallized into statute law.

Now, if that can be done, if it be possible with reference to the principles of the common law, the question is whether it will facilitate the labors of the profession and the bench. That is what the question must come to. Our admiration for Justinian never will settle this question. Our objections to a law that the people cannot read never will settle this question. The question is whether it will facilitate the labors of the profession and the bench. The uncertainty of the law exists on a great many questions, but in everyone the larger part of the uncertainty of the law is the uncertainty of the lawyer as

to what the law is. Therefore I would modify this resolution, so that it be confined to the substantive principles of the law, so far as settled. I would not undertake to preclude, but perhaps invite, the opportunity for amendment and reform in the law. But that is not before us. The question is whether stating the substantive case law in the form of statute law would not clarify and add to the sanction of those principles which are now the instruments with which the professional work is done. It seems to me, as I watch the course of practice now, the habits of the forum, and the delvings through the reported decisions, that more than ever the success of the profession depends on facility, and acuteness of its members in the analysis of facts, on a mastery of general principles and on close judicial reasoning, these all being manifested by transparent clearness of statement; and that the authority of precedents cannot very much longer serve as a foundation on which we are to stand.

The President:

If an amendment is offered it must, under the rule, be reduced to writing.

George A. Mercer, of Georgia:

I desire to give a brief section from my own experience. I do not believe that anything I can say will add emphasis to what has been said. I find that the chief opposition to this proposition comes from those who are admirers of the common law, and the chief ground of opposition is that it will destroy the symmetry and elasticity of that beautiful system. Now, sir, it seems to me that the defenders of the contrary of this proposition have forgotten that remarkable statement of Blackstone, "That the common law consists simply of statutes worn out by time." I have heard it asserted to-night that it is impossible to codify the principles of the common law. When I came into active practice immediately after the late war a code of Georgia had just gone into operation. The very act which provided for that code declared that the codifiers should not

simply codify the statutes and decisions of the Supreme Court of Georgia, but they should codify the principles of the English common law as they existed in Georgia at the time of the adoption of our statute. That proposition met with opposition from all the old lawyers in the state. I can well remember that the gentleman who was my preceptor bitterly opposed that innovation. Now, Mr. President, there were many old lawyers that opposed that code, but I was one of those who grew up with the code and the code has been in operation for more than twenty years. Take, for example, the subject of the statute of limitations. In order to ascertain any point or principle upon that statute I was obliged to wade through a wide digest in order to find what I wanted. Judge Combe, in Georgia, embodied all the different statutes on this subject in one statute, which was known as Combe's Common Law upon the Statute of Limitations, and I can certify from my own experience the immense assistance that it rendered every young lawyer in Georgia. There was another subject, the subject of attachments through absconding debtors. You had to look through a dozen books to discover what you wanted. This same gentleman codified those into a book. That itself was a great boon. Those two acts suggested the code of Georgia. The act was passed before the war, but the code did not go into practical operation until after the war closed. Now, sir, I don't believe that there is a single lawyer in the state of Georgia that would vote to abolish it. Of course, it has been modified and interpreted by the courts and our legislature has gone so far as to indicate that a unanimous decision of the Supreme Court of Georgia had the effect of a statute. If the supreme court acts unwisely, the remedy is with the legislature who alters it. Now that it has worked successfully for that length of time it surprised me to come here and hear gentlemen say it is impossible to codify. It seems there is some difference of opinion on this question among the gentlemen from the state of New York, but that cannot concern the other members of the Association. We are called upon to

assert our opinion, and in the form in which it reads, and I have no right to suppose that there is anything covered up by it. I believe if the members of this Association would try the code they would all be in favor of it.

James J. Myers, of Massachusetts :

I do not propose to detain this body with a long speech, but there is a question I should like to have discussed, if we are to vote upon this question as it stands, viz., how is codification going to accomplish the expedition of litigation, and thereby secure what the original resolution two years ago seemed to contemplate, which was an improvement in the administration of justice? The whole range of this discussion has seemed to lose sight of the question of what we would gain if we were suddenly to enact a code. We find, I believe, that litigation necessarily results in the exposition of statutes, which of itself results in just as many, or more, cases that originally arose on those same questions. In Massachusetts we have certain legislation rendered necessary on the liquor question. Now, I do not suppose there is a gentleman here that does not know what a public bar is, and yet when it became necessary to pass upon certain of our laws, a certain statute as to what amounted to a public bar, the question came over and over again before our supreme court; and there are half a dozen questions which really depend upon the question of what a public bar is.

I want some gentleman who advocates the code to point out to us how it is to accomplish the result which we are looking at, viz., advance the administration of justice, diminish litigation, and make us able to tell our clients just what the law is. Some of the gentlemen from New York have said that codification will only increase litigation. Codification at large is something that has been wisely dealt with only when dealt with in the most philosophical and systematic manner. I hope the resolution will be voted down if it is pressed in its original form.

Simeon E. Baldwin, of Connecticut :

I rise in behalf of the Executive Committee, simply to bring to the attention of the Association a communication sent by Simon Sterne, of New York, just before he left for Europe. He says he is in favor of the resolution reported by the committee, but opposed to its adoption, and the reason is that before we have codification we ought to have codifiers. We ought to have a legislature constituted in a certain way, which he suggests. I move, sir, that this communication be referred to the Committee on Publications.

H. C. Semple, of Alabama :

I second that motion.

Carried.

The President :

The communication will be so referred.

H. C. Semple :

Mr. President, we find that in the discussion of this question before us, the objections made to the resolution are of a two-fold character. First, it is objected that the resolution offered is not relevant to the purpose for which the committee that reported it was raised, but it is enough for me, without regarding the indirect charge that the committee has abused its powers, to see that the resolution is regularly before us for our consideration. Again, we all know that when a horse shies badly, it usually arises from defective vision ; he is alarmed without cause, because he does not see well, and therefore starts at imaginary dangers. The opponents of the resolution, like half-blind horses, are startled by the ignorant apprehension that some practical reformer will endeavor to evolve a code of laws out of his inner consciousness, and thus cast down and break their idol, the common law.

All history teaches us that such apprehension is vain ; no enthusiast was ever so mad as to attempt such a thing, and

every code of which we read has been merely an orderly and methodical embodiment of the customary and statutory laws of the people on whom it was to operate. The Mosaic code, as we find it in the Old Testament, was thus the mere statement of the immemorial usages of those Oriental nations among whom Abraham had lived in his journeying with his flocks and herds from Mesopotamia, till he went down into Egypt, with the addition merely of some of the laws he found in Egypt, and those wise rules suggested by the genius of the great law-giver, as necessary to preserve his people against the corrupting idol worship of their neighbors, and the longing desire which lingered with them to return into Egypt. Thus it was also with the code of Mahomet, who embodied pretty much the same system of laws, the worship of one God being the same central idea, as in the Mosaic code.

The advocates of the codification of our present system of laws do not profess to do anything more than to crystallize the laws and preserve them from a too ready change at the hands of the judges. They think that the courts will not find it so easy to repeal written laws as they do to repeal the judge-made laws under which we live. That many of the laws under which we actually live are in fact enacted by the judges (appointed merely to administer the laws), is plain enough to all lawyers who are also men of conscience. We all know that the industry and zeal of counsel can find in the immense arsenal of six thousand volumes of the adjudicated cases, and the one thousand volumes of elementary works (chiefly made up of commentaries thereon), well tempered weapons for every attack, and perfect shields for every defense. That they can readily provide a law-asserting judge with the most satisfactory reasons and authorities, for deciding any given case either way, in favor of the plaintiff or of the defendant, without any shock to the opinions of the profession or the public. If this be so, and who can doubt that it is, the people may well be excused for believing, as they do generally believe, that every trial of a great cause is a mere gladiatorial

combat between Mr. Conkling and Mr. Choate, Mr. Field and Mr. Dillon, or other worthy champions of their clients, and that the case is decided not upon any settled rule of law, promulgated beforehand by proper authority, but upon a rule manufactured for the occasion by the judge.

This idea, which we all know to be generally prevalent, is fatal to that respect for the law in the minds of the people which is the only guaranty for their obedience to the law. Every lawyer of twenty years' practice has witnessed the repeal of this judge-made law by the courts in some of his own cases, even when of forty years' standing. It is so easy for a lot of men who are conscious that they have enacted a law, to satisfy themselves that they have a right to repeal it. I remember that only a few months ago our own supreme court, in a case in which I was engaged, declared that a charge given to a jury by the court was erroneous, though it was copied from the language of the supreme court used in deciding a case forty years ago, and this language had been repealed, *totidem verbis*, in at least a half dozen cases since, and approved during these forty years in twenty other cases. We believe that a codification of the existing laws would tend to insure the more prompt despatch of the business of the people in our courts. We believe that it would tend to greater certainty in the minds of the profession and the public as to the law of any given case. We believe that these advantages would also insure the still greater advantage of a more ready obedience to the laws, by increasing the respect and admiration of the people for the administration of justice, and we therefore wish to add the weight of the recommendation of this Association to the present general movement for a codification of our laws.

On motion, the Association then adjourned until Friday, August 20, at 10 o'clock A. M.

Friday, August 20, 10 A. M.

The President :

The first business in order is the nomination of officers.

The names of officers reported by the General Council were then presented by Henry Wise Garnett, and they were there-upon elected.

(See List of Officers, at the end of the Minutes.)

The President :

The continuation of the discussion of last night is now in order.

William E. Earle, of the District of Columbia :

I move that the general debate on this report be now closed, and that Mr. Field have thirty minutes to close the debate on his side. My motion is made because this is the last day of our sessions, and there are a great many other matters of business which ought to be attended to.

Upon a vote being taken the result was in doubt and a division was called for.

The President :

The Chair will state the question. The report of the committee being before the Association, the chairman of the committee moved the adoption of the first resolution reported by the committee. The discussion has been upon that resolution. The Chair understands that the motion, if carried, closes the debate upon that resolution.

Henry Wise Garnett, of the District of Columbia :

I would like to speak upon this motion.

The President :

The motion is not debatable.

Henry Wise Garnett :

Then, sir, I move that we lay that motion on the table.

The President :

The proper disposition of the motion is to reject it if it is not desirable. The Chair cannot entertain any motion or any amendment pending the question, a division having been called for.

Upon the call of the ayes and noes the motion was lost : 28 ayes, 55 noes.

J. Frank Fort, of New Jersey :

I offer the following resolution :

Resolved, That the debate on the question now before the Association close at 12 o'clock, and that the last half hour of that time be given to Mr. Field.

Henry Wise Garnett :

I move to lay that motion on the table.

Upon a vote being taken the motion of Mr. Garnett was lost.

The question then being on the motion of Mr. Fort, it was put to vote, whereupon, the result being in doubt, a division was called for, and the motion prevailed : ayes, 52, noes, 35.

R. D. Benedict, of New York :

I am unable to concur with the mover of the substitute for the resolution. The resolution is presented by a committee which was appointed to consider whether the present delay and uncertainty in judicial administration can be lessened. Now, it seems to me that it is within the scope of the resolution by which the committee was appointed, for the committee to say, "We think that uncertainty in judicial administration can be lessened by the adoption of a code," if they see fit so to say. Therefore I am opposed to the substitute.

I am not in favor of the original resolution. In its form it seems to me objectionable. It is subject to three different constructions on a matter which I think ought to be clear and definite. When the committee say that "the law" ought to be put

into the form of a statute, that in strict terms means that all the law should be put into the form of a statute. They add to that "so far as possible," which is a changing of the sense of the first meaning so as to make it entirely elastic; so that a man who is utterly opposed to the first proposition—that the law ought to be put into the form of a statute—can still vote for the resolution because he thinks it is impossible. I do not think that is the fair way to present this question. It ought to be presented so that all who believe that the law should be put into the form of a statute should say so, aside from the question of possibility or impossibility, and the two questions ought to be separated.

Now, on the question of whether all law should be put into the form of a statute, it seems to me that such a proposition would hardly be considered debatable; that it would hardly be considered possible that all the law should be put in the form of a statute, or that it would be advantageous, if there was no law but statutory law, for that is what the result would be. I understand and have heard from members of the committee here that that is not what they claim to be the meaning of the resolution, but that they claim it to mean that certain principles, if they can be stated, should be stated in the form of a statute. Now, sir, assuming that to be the question, it is a matter largely of experience, as to how far a statutory law should be established. I do not think it is a question as to which you can say that the same result will be arrived at in all branches of the law. I think there are some branches of the law which may well be made statutory. I do not think there is any one general rule which can be applied with reference to it; but on the question whether branches of the law can be made statutes or not, I think that is a question which should be largely determined by experience. I came to the bar about the time when the code of civil procedure in the state of New York was adopted, and I have asked myself whether, in the thirty years since that was adopted, the result of that has been to lessen uncertainty in the law. I do not know much, except

what I have heard, of the uncertainty which prevailed before; but I do know something of the uncertainty which has prevailed since, and I know that the matters of judicial administration have been made uncertain, not only by the uncertainty of judicial decision, but by the uncertainty of legislative action ever since. If in the branch of general definitions and general principles an attempt should be made to put them into statutes, I see no reason why that element of uncertainty should not also be added to the present element of uncertainty.

Another matter which is referred to by the majority of the committee in their report is the adoption of rules of navigation, which they seem to think has lessened the uncertainty of judicial administration in that respect. My experience is the other way. There have been new questions arising continually since the attempts to put those rules of navigation into the form of statute.

Now, sir, one reason which the supporters of the resolution give why we should have a code, is because, they say, "We are opposed to judge-made law"; and the report also says the people will not be satisfied with a law made by lawyers. Pray, gentlemen, what is a code except a law made by lawyers? I say the people will be satisfied with the law made by lawyers because lawyers are the proper persons to make the law.

If anyone thinks that by the adoption of a code they lessen uncertainty, it seems to me that he fails to see that the questions which arise under statutes are of the most uncertain class.

Place the law, as far as you can, in the form of a statute, and while you remove some elements of uncertainty you create other elements of uncertainty. You cannot make a certainty in one direction without making uncertainty in others. You cannot get rid of what is called judge-made law, except in one way, and that is by abolishing judges. And this difficulty about the six thousand and odd volumes of reports, which has been spoken of—so far as it is a difficulty, it seems to me that it is a difficulty which is inevitable from the complexity of our

civilization and the advancement of science and modern knowledge.

I remember to have read some years ago a discussion by a prince who came from India, an intelligent man, of a comparison between the condition of things in India and in Europe. He made one remark which struck me very much. He said, "The advantage you have over us is that you in this region of the world amass the knowledge of one generation for the generation which follows, whereas, with us, each generation has to take care of its own knowledge."

The difficulty which arises from this mass of reports arises from this continual massing up of the knowledge of one generation for the generations which are to follow. Gentlemen, you cannot have the advantage without the burden, and if any one thinks that by putting the law in any direction into the form of a statute, he will thereby lessen the necessity for the examination of authorities, my experience is that he will find out that that is a mistake. And I am opposed to this codification of all the law for this reason, that any man, who heretofore has found it necessary to examine six thousand volumes of reports, when the code is passed, will find it necessary to examine thereafter six thousand and one volumes.

Thomas Dent, of Illinois:

Mr. President, I have heard of a college professor who gave a reason for standing aloof from any profession. His reason was that if he should take a profession he would feel it his duty to preach the gospel. Now, sir, I came from a part of this country where it has been my privilege to see something of growth. We have been obliged to satisfy ourselves for a time with a log cabin, expecting afterwards to remove to the log house, and at a later time to the frame house, or possibly in the course of time into the brick or stone house. It may be that we are coming to a time when we may ourselves be prepared to move into a more stately edifice, but before we reach that time we must look to the foundation on which we

build. I agree with the last speaker, that it was within the province of the committee to consider this topic and to report this resolution ; but, sir, it seems to me that the resolution is likely to be misconstrued in the manner which has been stated by the gentleman who just addressed us, and perhaps in other respects, as we heard last evening. I have had an experience which has not been very short in a state governed in the main by common law principles, and having mainly common law forms and modes of proceeding. It has been necessary for me at times to go into other jurisdictions where they have had codes, especially codes of civil procedure, and it has seemed to me as I have noticed the practice in those other states and territories to which I have gone, that it is very well for a comparatively new state to have something like a code, but it is more questionable whether we can properly say to a state which has already laid a good foundation for a more stately edifice, to ask that state to build that edifice at once. The statute law and the decisions of the courts in most of the states present a body of law which for certainty is equal to that of those states in which codes have been adopted, and I might be more emphatic in the expression and say that in some of those states which I now have in mind there is more of certainty in the administration of law and justice than there is in those states which are especially code states. For these reasons, Mr. President, I oppose the resolution which is offered for adoption.

Edmund H. Bennett, of Massachusetts:

Mr. President, I do not rise to speak on the general subject of codification at all. I do not consider myself qualified to discuss that subject, much less the perfections or imperfections of the so-called Field code. What I desire information upon is, whether the subject of codification at all is legitimately and properly before this Association at this time, whether it is germane to the resolution which created this committee and under which they were appointed two years ago. If it is

not, it will relieve some of us who are not so cognizant with the subject of codification as those nearer this place, from voting upon a question that is surrounded with very great embarrassment, because it is easy to see that the subject of codification is too complicated to be disposed of dogmatically on the one side or flippantly on the other.

Stephen P. Nash, of New York:

Would it be in order for me to ask to have the resolution which I introduced last evening amended in one or two particulars before the debate proceeds further?

The President:

Certainly.

Stephen P. Nash:

I had overlooked the fact that the report contains several other resolutions of more or less gravity and importance, and that the resolution which has led to this discussion is only the first resolution of the report—that which relates to the subject of codifying. I would like, therefore, to offer this resolution in lieu of the one I offered: “*Resolved*, that in the opinion of this Association the subject of codification or of reducing the general body of the law to a statutory form is irrelevant to the subject of delays and uncertainty in the administration of the law, and that accordingly the first resolution of the special committee be referred to the standing Committee on Jurisprudence and Law Reform,” where, it seems, it properly belongs.

Austen G. Fox, of New York:

I have not been at the bar long enough, nor have I practised under two systems, so as to make my experience worth repeating, and I question very much whether this assembly is so far like a religious meeting, where one gets up and gives one's experience, as to make the sum of those experiences on one side or the other useful in determining what, in its present shape, seems to be merely an abstract question. And if I were a member from another state than New York, I should

think when I came here to attend the annual meeting of this Association, that I might be relieved from entering into local disputes, and being called upon under the form of a general resolution on an abstract question, to put myself on record, as one gentleman said yesterday, as being on one side or the other of any such local controversy. Those of us in New York who have been in this controversy do not need the interference or the aid of this Association, and I do not think the bar of New York comes here to ask it, and we have nothing to do, therefore, with it. Now, this resolution is concerned with an abstract question, or a concrete one. If it is an abstract question, then, as we are not a debating society, and as our opinion expressed upon an abstract question will not be of any use to the community, it is doubtful how far we ought to pass upon it. I suppose when a resolution is introduced into an assembly that the burden of proof is on those that introduce it, in the first place, to put it into such shape that there can be no doubt as to its meaning, and in the second place, to convince those who are opposed to it that the idea which it embodies is one which ought to be put in operation. If the resolution only means to assert that so far as it is possible to reduce the law to the form of a statute it is possible to do so, then of course, as Mr. Russell said, is there any sane man that would vote against it? But ought we to pass a resolution the meaning of which is not clear? If, however, the words "so far as possible" do not mean anything, then we come to the resolution: "*Resolved*, that the law itself should be reduced to the form of a statute?" Some think it should be. Others think it should not be. Other gentlemen say it only means so far as it is practicable. So far as it is practicable,—where? Why, in each community which must in the end settle the question for itself, because whether it is practicable and desirable in a given community to put the law into the form of a statute depends somewhat upon the question whether that community has reached the time when it is satisfied to do so. Hereafter, some one will claim that this resolution means, "*Resolved*, that we are in favor of codification," and the

trouble with it is, that the explanation given in debate does not follow the resolution into the legislatures where it may be discussed hereafter, and we are not always certain that the explanation of one gentleman will be the explanation of another, or even that the explanation of one gentleman will be the same in another room. Therefore, I think that this Association should be relieved from voting upon this resolution at this time.

L. E. Chittenden, of New York :

Say what we please, excuse ourselves as much as we please, try to avoid it as much as we will, the living important question before the bar of the United States and the legislatures to-day is the question of codification, and it has got to be met in some way. Surely it is consistent neither with the dignity nor the purposes of this Association to evade the great issues which are pressing for decision. Though such may not be their purpose, I submit that all the amendments or substitutes proposed, belong to one of two classes—they are either evasions of the issue of codification or attempts to postpone its consideration. The *argument* for codification has been presented by the gentlemen who opened this discussion with singular ability and force. I hoped to hear the argument against it, and I have heard little that deserves the name.

The bar is nothing if it is not conservative. The bar is always averse to innovations of any considerable importance upon its habits or practices, and if this was not an age of progress, we might stand still and not attempt to adjust ourselves to the condition of things. Sir, I was brought up in New England, and all my education and traditions were opposed to the principle of codification. When I look back to the courts as they were at the time I came to the bar, I can say that if we only had judge-made law such as was made by the courts there, we should have law that would be law as long as our institutions continue, law to which no one could object; but, sir, in those days there was a respect for the law and a

reverence for the judges that has entirely passed away, and I ask myself what is the reason that we do not entertain the old reverence and respect that we used to have for precedents and for judges. I think the explanation was alluded to by Mr. Abbott last night—the vast multiplication of courts and precedents, which has broken down of its own weight, and consequently the representatives of the people and a great many members of the bar are now looking to some relief from what we all understand to be a positive evil. What changed my opinion about the code was this: I had occasion only about a year ago to go into another state and spend some little time in a professional engagement—a state which has suffered for thirteen years the infliction of the Field code, as it is termed—and when I went there the litigation in which I was engaged brought together a large number of the leading members of the bar, and when I made some observations which implied a disrespect for the code, to my utter surprise, it was received by that party of lawyers somewhat in the same sense as a reflection upon the court would have been. I thought then it was time for me to look into the practical workings of that code, and I did so, and from leading members of the bar in that state I learned that they thought so well of it that they would not consent to give it up.

A Member :

Was that state California ?

L. E. Chittenden :

Yes, sir ; and I don't think you can find to-day a lawyer in that state who would vote to give up the code, which has been in operation since 1873. It seems to me there is no use in attempting to dodge this question.

I do not believe there is a lawyer here who will say he does not believe that a settled principle of law can be reduced to the form of a statute, and that this resolution cannot be fairly carried out. Of course it will be attended with difficulty, but it is only right and proper and dignified for the American

Bar Association to say that American law can be put into language and expression which everybody can understand. Let me refer now to the experience of the bar in one thing and compare it with the code. I remember when one of the states first introduced and passed a statute declaring that the interest of a witness in the event of an action should not exclude him from testifying. The bar was universally opposed to that form of legislation. We all said it was an innovation upon the common law, and would multiply perjury over and over again—and I am afraid it has—but in spite of us the settled public opinion was in favor of it, and the measure prevailed. Think how many of all the elementary books upon evidence, how many hundreds of cases that we used to have adjudicated and examined and considered have been swept away entirely out of use, and might as well be taken from our libraries as to remain there. The same is true of decisions upon the subject of married women, abolishing the difference between law and equity. In proportion as our courts multiply, and in proportion as we lose our respect for precedents, may we not make what little law is settled certain, so as to place it beyond the reach or power of courts to repeal or consider. It seems to me that announcing that as a principle is announcing what is in conformity to practicabilities and possibilities, and just so far as it can be practicable to be carried into effect will be advantageous to the public and to the bar.

The President :

The hour has now arrived at which we voted to close the general debate and give Mr. Field an opportunity to close the discussion.

David Dudley Field, of New York :

Mr. President and gentlemen of the Association. It will be difficult to compress within the limit of half an hour an answer to all the arguments and objections which we heard last night and have heard this morning against the resolution

reported by the committee. Let me begin with adverting to the objectors. The first one was the gentleman from Pennsylvania, whose objection seemed to be that the common law in its present form was the perfection of reason. To him I have only to answer with the words of Lord Campbell in his life of Lord Mansfield, "He formed a very low, and, I am afraid, a very just estimate of the common law of England which he was to administer." And again, "His plan seems to have been to avail himself, as often as opportunity admitted, of his ample stores of knowledge, acquired from his study of the Roman civil law and of the juridical writers, produced in modern times by France, Germany, Holland and Italy." This is all I have to say to our friend from Pennsylvania.

The next gentleman was my friend from the District of Columbia—my active friend, my agile friend—who moved before the footlights as if he were not a member of the bar, and complained that my resolution would be a trap for him, not because it was bad in itself, but because I should infer from it something he did not like. A poor compliment that to his own ability and his own resources. If he would not assent to my proposition, until I explained what I inferred from it, he showed so little confidence in his own wisdom, that I will take him at his word and leave him alone.

The next gentleman was a member of my own bar in New York—I refer to Mr. Turner—who spoke chiefly in condemnation of the civil code, which has been before the legislature of New York so long a time, and whose great objection appeared to be that I had introduced into it a section about nuisances which was intended to benefit the elevated railways, for which I was counsel. Let there be no mistake about this charge and the answer to it. He reiterated what had been stated many times before! The fact is that the section he objects to expresses neither more nor less than the ancient law of the land, that it was reported, together with the whole code, in 1865, that I never saw or heard of an elevated railway until many years afterwards, and that my first connection

with one was as late as 1877. Bear with me then as I pronounce the charge shameful, and hold it up, as I mean ever to do, for a sample of the unjust criticisms with which the code has been assailed. Do you not agree with me now, that I have no occasion to pursue Mr. Turner further?

The next gentleman was Mr. Nash, who has rarely been here before. At least, I do not remember to have seen him here. He had to say that this resolution was not germane to the inquiry referred to the committee, because the discussion of a code, which would, as we say, simplify the law and smooth the path of justice for the people as well as the judges and lawyers, was no part of the business of this Association, and was not within the scope of an inquiry as to what can be done to lessen the delay of judicial administration. He forgot that the resolution contained the word "uncertainty" as well as "delay." I may pass him by.

Next were two gentlemen of Massachusetts, whom I have not the honor of knowing personally, though I should be glad to know them, and their argument was against any codification whatever. Now, I do not know the age of these gentlemen, but I do know that much of the agitation we have had about codes had its origin in Massachusetts, and that the authors were Joseph Story, Theron Metcalf, Simon Greenleaf, Charles E. Forbes and Luther Cushing, lawyers and judges of that state, who, probably before these gentlemen were born, reported, that it was not only practicable but expedient to make a code of the common law of Massachusetts. And it is a remarkable instance, Mr. President, of the evanescence of fame, of the suddenness with which reputation disappears, that these great names should so soon pass into oblivion in their own commonwealth and at their own bar.

The last speaker whom I need to mention, was my friend Mr. Benedict, for whom I have much respect, a respect for him and for his name, for I have long known his family. He made this most extraordinary argument: Your New York code of civil procedure has proved to be a source of litigation.

Grant it. Who made it so? New York lawyers. As the code of procedure stood from 1848 to 1877, it was a simple well-known system, which everybody understood, and which nobody wished to change, except a few persons who got up a commission to revise the statutes, and they set to work to change the code against the remonstrances of its friends, by the aid subsequently obtained of the New York City Bar Association and its adherents throughout the state. These are they who palmed off upon us a work, which they called a revision, of which they are now loath to bear the burden. I warned them of the consequences then, and I tell them now that they will never have the civil procedure of New York, as it should be, until they go back to the code of 1876, and complete it according to the design of its authors.

Now, proceeding to the question before the Association, I beg you to observe the form of it, which is whether the resolution that the law itself should be reduced so far as possible to the form of a statute should be adopted. My friend, Mr. Abbott, an eminent writer, whose opinion I regard with great respect, suggests this amendment, to strike out the words "so far as possible," and substitute "so far as its substantive principles are settled," so that the resolution will read, "that the law itself should be reduced, so far as its substantive principles are settled, to the form of a statute." I have not the least objection to this amendment. The two forms mean, in my view, the same thing. What do we mean? The resolution does not affirm that we must have a code. I think we must, and I think that the adoption of this resolution will logically lead to a code, because it will be found, when you follow up the proposition, that it is possible to reduce a great many of the branches of law, if not of all, to the form of a statute. That would be a general code. This conclusion presents, however, another question. I prefer to take one thing at a time, and I put it to you as reasonable men whether you should not first adopt the abstract proposition that you prefer written to unwritten law. There are only two modes of

expressing law now. One we call unwritten because it is not written in the statutes, but rests only in the reports. The other we call written because it is written in the statutes, and thus we say reduced to a statute. The question is whether the laws made for the people should be understood by the people. Do not blink at that question, for you are to decide it. Let me tell you that the bar of this country is itself on trial before sixty millions of people. You are only seventy thousand in all the states, and although you are a great and powerful body, as I rejoice to know, because I am one of you and share my fate with you, yet I think that the bar will be as a drop in the stream against the tide of public opinion. Do you suppose that the people will allow you to make laws for them without knowing what those laws are? How long do you think such a condition of things will last?

I say, moreover, that the law should be written, because it is natural to write what we would make clear and precise. The chairman ruled yesterday, when a member offered an amendment, that it must be sent up in writing. Why? Why not leave the amendment to the recollection of the proposer and of the members? Because you would have it certain. When you enter into a contract do you leave it to memory? Do you not reduce it to writing? The greatest facts in the history of English and American jurisprudence have been written down. Magna Charta was put into writing, Burke says, for the purpose of defining by positive written law the privileges of the people of England. The law of libel was reformed by Act of Parliament. In this country we have moved in the same way. We made a written constitution. Was that a mistake? We had a dispute with England about the "Alabama." What was it for? It was for the depredations of that vessel, and the question was whether or not England was responsible for them. Was not that a question to be settled by international law? Certainly. Why then did not the administration of President Grant send counsel to Geneva to argue the question upon the common law of nations? No,

said our government, the rules of law by which the tribunal is to judge must be written down first. They were written down and then the tribunal was established. During the war the President issued a proclamation emancipating the slaves. That raised a great question of public law, whether a commander in the field could emancipate the slaves of his enemy. The question would have led to interminable conflicts and debates; and so, said the American people, "We will write the freedom of the slave in plain English," and they did write it and put it into their constitution, where it will stand forever. Now, Mr. President and gentlemen, this was doing what I insist that we shall do, that is, write down our rights and our duties whenever we can. The resolution does not say do it now, but whenever it can be done. Would you have your rights and your duties determined by tradition, by inference, by the fleeting opinions of men? No; you wish them formulated and put in writing, whenever it is possible, so that all men may read; and that is exactly what this resolution calls for.

Now, Mr. President and gentlemen, I have spoken half of my time. I did not intend to say a word about codification. I intended to confine myself and to urge you to confine yourselves to this resolution alone, which is, that so far as we can we will place the laws of the land in plain language, accessible to all the people and understandable by all the people.

"Oh," said a gentleman, "you intend to have a code?" Well, if they mean that I intend it, there is no doubt of it. But many others may not intend it, and I would not have a debate with them now on that subject. Let us take one thing at a time. Pass this resolution, and then let us consider in our several states, whether this rule of law or that rule of law, can be put into a statutory form.

As to the expediency of a code. I have to ask what you mean by a code? We do not mean by it a book which shall contain within its covers all the rules of law which are to govern all the transactions of men in all future time. Nobody

but an idiot supposes that. We mean by a code a condensed and classified collection of the general rules of law, settled or that should be settled, on a given subject or class of subjects. That is all. We can have a code of real property law. Your honored father, Mr. President, was member of a commission which deserved great honor for being the first in an English speaking community to formulate the law of real property. They made an almost complete code of it, and when we, the code commission of a later time, sat down to finish what they had begun, we had only to add a few sections.

Gentlemen have much to say about the statute of frauds. Do you not see, they say, that there are three volumes of comments on that statute alone? I retort by asking, would you repeal it? Did not a Chancellor of England declare that every line of it was worth a subsidy? And yet that statute is referred to by these anti-codifiers as an awful example of the folly of writing a law! What do you say of the constitution of the United States? That is a code. Would you abrogate it? We do not forget that human language is susceptible of different interpretations; but we say that putting a law in writing gives a greater assurance of its being correct and precise. We do not say that it will prevent all possible misconstruction.

The argument for a code rests on authority, on experience and on reason. It is reasonable that law should be written. The law was put into writing on Mount Sinai. The two tables of stone were a code. Suppose some of my associates of the New York City Bar Association were dealing with them; would they not exclaim, "How badly written they are! We will refer them to a committee for amendment." "Thou shalt not bear false witness against thy neighbor." Why against your neighbor? Do you mean that you may bear false witness against everybody else except your neighbor? There is not one of these commandments that our objectors would not riddle through and through. Later ages have produced the code of Justinian, the Code Napoleon

and the codes of Continental Europe. But, say our objectors, the Anglo-Saxon race is different from other races no people that had the vitality of the Anglo-Saxon ever made a code. What do you say of the vitality of our friends of Louisiana? Is it that because they are partly French and partly Spanish, with a great admixture of English and American, therefore they can bear a code, whereas the sturdy Anglo-Saxon cannot! Is that the argument? What follies impose themselves on mankind! When you have a particularly silly argument, the true way to answer it is that which Napoleon adopted. Bah! I do not say that anything has been said here which deserves this answer, but I have heard much outside which deserves nothing else. Because a nation is Anglo-Saxon it cannot have a code! Its vitality is too great for that, or a code will weaken its vitality! Was France made weaker because she had a code? Is Germany any the more feeble because she has codes? Has she not rather risen to the height of power and dominated over central Europe? Is California feebler than Nevada, or feebler than New Jersey? We have in New York a penal code and a code of criminal procedure, and we have not waned because of them. They were opposed by the very men who come here from the City Bar Association to oppose our resolution. These men passed a string of resolutions in their Association, declaring that the penal code was an invasion of the rights of the citizen and they called it very hard names. What then? It was passed, nevertheless, and in two years afterwards I sent a circular to every supreme court judge, every county court judge, and every district attorney of the state, inquiring how it worked. I received many replies, but not one that did not commend its working, and some added they did not see how they had got along without it.

Now, as to the authority of names. Whom have we on our side? First of all Mr. Justice Miller, of the United States Supreme Court, who declares himself in favor of codification and recommends a code of federal procedure—a bill for which

has been already introduced into the United States Senate. We have Story and his associates, and Walworth and a host of others.

Why cannot we lawyers rise to the height of our profession, and feel ourselves bound to improve the law of the land and to do everything in our power to make it plainer, cheaper and easier for the people? The majority of lawyers appear to care nothing about it. In this Association, numbering over seven hundred members, we sent out circulars asking their opinions upon the questions stated in our report. How many answers do you think we received? Between forty and fifty! In our State Bar Association, at the suggestion of the governor, we sought the opinions of the members upon the proposed civil code, and to that end sent a circular to each of them—about three hundred—asking their opinion, and we received answers from between twenty and thirty, and no more. But I am glad to say, that of these everyone who admitted that he was in favor of codification as contemplated by the constitution and had read the code, declared that he was in favor of its enactment.

What is the reason of the indifference of lawyers to the reform of the law? The truth must be told. Too many of our calling look upon it not as a profession but as a craft. And it is because they so regard it that they do not strive to elevate it. The majority of the bar of this country have hitherto opposed every great legal reform. I challenge the student of history to find any important law reform in our times advanced by the great body of lawyers! Every such reform has been carried by the people with the aid of a minority of lawyers. Take heed in time. You of the majority opposed the abolition of imprisonment for debt. You opposed giving woman her rights. You have opposed every attempt at codification, and it will be so always until you arrive at a better sense of the dignity and the duty of the profession. Profession, I call it, and not a craft. We belong to a learned and noble profession, which has held in its ranks

some of the greatest men of all time from Cicero to Bacon, from Bacon to Mansfield, from Marshall and Story to the great judges and lawyers of our day. Let us show ourselves worthy of them! Let us act as becomes their brethren, and do all we can to elevate this profession, which is our pride and boast, and make it a means of beneficence to all the people of the land.

W. H. H. Russell, of New York :

I move that the vote be taken by call of the roll of states, and let each member rise and announce his vote aye or nay.

The President :

That motion will be in order when the vote comes to the original proposition. The chair will state the condition of the question. The resolution reported by the committee and now before the Association reads as follows :

"The law itself should be reduced, so far as possible, to the form of a statute."

Mr. Garnett moved as an amendment as follows :

"This Association does not, however, favor or oppose what is known as codification."

Mr. Abbott moved as a further amendment to substitute for the words "so far as possible," the words "so far as its substantive principles are settled."

Mr. Nash offered the following :

"*Resolved*, That in the opinion of this Association the subject of codification, or of reducing the general body of the law to a statutory form, is irrelevant to the subject of delays and uncertainty in the administration of the law, and that accordingly the first resolution of the Special Committee be referred to the Standing Committee on Jurisprudence and Law Reform."

The question must first be taken upon this resolution of Mr. Nash, inasmuch as it would dispose of the resolution and the amendments by a reference to a committee.

A vote was then taken, and the result being in doubt, a division was called for, whereupon the resolution offered by Stephen P. Nash, of New York, was lost. Ayes, 42; nays, 53.

The President :

The question will now be upon the amendments to the resolution, taking the vote first upon the amendment offered by Mr. Abbott.

L. E. Chittenden :

I understood the chairman of the committee to accept that amendment.

David Dudley Field :

I have no objection whatever to accepting it. I think it amounts to the same thing.

The President :

Very well. Then the resolution as now amended will read, "The law itself shall be reduced, so far as its substantive principles are settled, to the form of a statute."

The question now comes upon the amendment offered by Mr. Garnett, to add to the resolution, after the word "statute," the words, "This Association does not, however, favor or oppose what is known as codification."

A vote was then taken. The result being in doubt, a division was called for, and the amendment proposed by Henry Wise Garnett, of the District of Columbia, was lost. Ayes, 29; nays, 49.

The President :

The question now recurs on the resolution as amended.

W. H. H. Russell, of New York :

I move that the vote be taken by a call of the states.

A Member :

I second that motion.

Lost.

Henry Budd, of Pennsylvania :

I move that the vote be taken by the ayes and noes, from the list of members.

The President :

That vote cannot be taken in that way, as we have no authoritative roll of members present. The only authoritative list of members is from the register and all the members present have not registered.

George B. Kulp, of Pennsylvania :

It seems to me that the register is the authoritative roll.

The President :

The chair will submit the question to the Association. Those in favor of calling the roll of members from the register will say aye.

Lost.

The President :

The question now recurs upon the resolution as amended, the vote to be taken in the usual manner, "The law itself should be reduced, so far as its substantive principles are settled, to the form of a statute."

A vote was taken. The result being in doubt, a division was called for, and the resolution as amended was adopted. Ayes, 58 ; noes, 41.

The President :

What is the pleasure of the meeting as to the remaining resolutions reported by the committee ?

David Dudley Field :

I move that they be adopted. I don't suppose there will be any opposition to them.

Stephen P. Nash, of New York :

I move that the remaining resolutions be postponed for consideration until the next annual meeting. They are new, I

believe. The first resolution has absorbed so much time that I think the rest better be taken up at another time.

David Dudley Field :

Well, sir, I have no objection.

The President :

It is moved and seconded that the consideration of the remaining resolutions be postponed until the next annual meeting of the Association.

Carried.

David Dudley Field :

I offer the following resolution :

“Resolved, That this Association approves of the bill which has been introduced into the United States Senate by Senator Cockrell, of Missouri, providing for the appointment of a commission to prepare a federal code of procedure recommended strongly by Mr. Justice Miller of the United States Supreme Court, or any other bill having a similar object.

R. D. Benedict, of New York :

I think, sir, that is a matter that will certainly call for very great debate.

The President :

If objection is made it is out of order at this stage of the proceedings. We have a special order at this time. The report on the subject of habitual and professional criminals is now the special order.

Simeon E. Baldwin then read the report referred to, down to and including the resolution offered in it for adoption, and moved its adoption.

(See the report, in the Appendix.)

Charles Borchertling, of New Jersey :

If this resolution should pass it seems to me that the states

would be compelled to build innumerable prisons. I therefore offer the following :

“Resolved, That this Association recommends to Congress the passage of an act creating a penal colony of the United States and to which each of the states and territories of the United States shall have the right and power to convey all such criminals as may have been convicted twice and whose sentences shall not be less on the second conviction than five years penal service.”

W. H. H. Russell, of New York :

I move that the substitute just offered be referred to the same committee, to be acted upon next year.

Charles A. Peabody, of New York :

I second that.

Henry Budd, of Pennsylvania :

I move that this important matter be postponed until next year.

B. A. Willis, of New York :

I second that motion.

The motion to postpone was lost. The substitute offered by Charles Borchertling was referred to the Committee on Judicial Administration.

The question then being on the resolution as read by Simeon E. Baldwin, it was adopted.

The President :

A telegram has just been received about a matter pertaining somewhat to this subject. It is that the anarchists on trial in Chicago have been convicted and will be sentenced to be hung, with the exception of one who will be sentenced to fifteen years' imprisonment.

Benjamin A. Willis, of New York :

I offer the following :

“Resolved, That five thousand copies of the reports (both the majority and minority) of the Committee on Delay and

Uncertainty in Judicial Administration with the Appendix be printed and distributed by the secretary."

Henry Wise Garnett, of the District of Columbia:

I do not see the necessity of that.

David Dudley Field:

The report itself is in type, and it will cost very little to have it distributed.

N. W. Ladd, of Massachusetts:

If we are called upon to do this, let us present two thousand copies to any person interested in this matter, for gratuitous distribution.

The President:

If we are to have amendments to this original motion, they must be put in writing or else they will not be considered.

Benjamin A. Willis:

I ask unanimous consent to withdraw the motion I have made, and to move that the whole subject be referred to the Committee on Publications, with power.

Simeon E. Baldwin, of Connecticut:

I second that.

The President:

There being no objection the whole matter will be so referred.

William E. Earle, of the District of Columbia:

I desire to offer the following resolution:

"In view of the limited amount of general legislation enacted by the present Congress, as shown by the review of the President in his annual address made in pursuance of a provision of our constitution, be it resolved, that a special committee of five be appointed by the chair to consider whether it be practicable to relieve Congress to any extent of the necessity for private legislation, with leave to report a method for accomplishing this purpose."

Orlando B. Potter, of New York :

I second that resolution :

Adopted.

W. H. H. Russell, of New York :

I move the following :

“ Resolved, That the President and the Executive Committee appoint a standing committee, to be known as the Committee on Entertainment.

The President :

The chair is of opinion that the subject for this year is already provided for.

W. H. H. Russell :

To take effect next year, I mean.

Walter George Smith, of Pennsylvania :

I move to refer that resolution to the Executive Committee. My experience is that we cannot say that the members of any standing committee will be in attendance at any fixed meeting. It is the invariable custom of the Executive Committee to act in this matter.

W. H. H. Russell :

Then I will make my motion to refer the subject to the Executive Committee, with power to act.

The President :

The resolution will then by unanimous consent be referred to the Executive Committee.

C. C. Bonney, of Illinois :

I desire to introduce two or three matters and ask that they be printed with the proceedings and referred to the committees which I will name for report and consideration next year.

First.—I present a resolution and a short bill of two sections, to secure a uniformity of practice in the courts of the United

States throughout the Union. I ask that this resolution and bill be referred to the Committee on Judicial Administration and Remedial Procedure.

(See Appendix.)

Second.—I present a short bill for Courts of Arbitration of the United States, and I ask that this bill be referred to the Committee on Jurisprudence and Law Reform.

(See Appendix.)

Third.—I introduce a bill to regulate inter-state debts, credits, and collections under the power to regulate commerce among the several states, and I ask that this be referred to the Committee on Commercial Law.

(See Appendix.)

The President:

There being no objection they are so referred.

Samuel Wagner, of Pennsylvania:

I offer the following:

“*Resolved*, That the Committee on Commercial Law be requested to consider and report to the next meeting the question of the desirability of the enactment by Congress of a national bankrupt law; and, if such a law be desirable, what should be its general character, and what method should be adopted by the legal profession to secure its enactment in the profession.”

The resolution was seconded, put to vote and adopted.

On motion of Luke P. Poland, of Vermont, the Executive Committee was empowered to secure the re-printing of such a number of the reports of the fourth annual meeting of the Association as in their judgment they deem fit.

J. Frank Fort, of New Jersey:

There seems to be some misunderstanding as to the disposition of the report of the Committee on Jurisprudence and Law Reform as to the resolution of Mr. Tenney, of Wisconsin,

in relation to the right of a creditor of an insolvent debtor to obtain equitable relief before obtaining a judgment. I want to know whether that matter is understood to have gone over until the next session, or whether the report of the committee, which was adverse, was adopted.

The Secretary :

The report was received, and the committee at its own request was discharged.

Simeon E. Baldwin, of Connecticut :

The resolution called upon the committee to report whether a certain grievance existed, and if so, whether it called for a remedy ; and if so, what the remedy should be. The committee reported substantially that the grievance did not exist, or if it existed, it was too small to call for a remedy. The report was accepted and the committee discharged. That, I suppose, terminated the matter of that resolution.

J. Frank Fort :

Then do we understand that that cannot be reported at the next meeting ? I should like to see that report before final action on it by the Association. I do not think it was generally understood by members that that report was concurred in, and if it is in order, I would move that the report of the committee on that subject be referred to the next session of this Association.

The President :

The report being in substance that there was no question presented requiring action by the Association, and the report having been accepted and the committee discharged, it strikes the Chair that that disposed of the whole matter.

Mr. Lancaster, of the District of Columbia :

Mr. President, I offer the following resolution :

" Resolved, That the eleventh annual meeting of the American Bar Association be held in the city of Chicago."

I move that the resolution lie over until the next meeting.

C. C. Bonney, of Illinois :

I second that motion.

Carried.

Edwin P. Green, of Ohio :

I offer the following resolution :

“Resolved, That it is the sense of this Association that all reports should be published by the state government and should be offered for sale at cost price.”

Referred to the Committee on Jurisprudence and Law Reform.

W. H. H. Russell, of New York :

I move that Senate bill No. 2110, referred to by Mr. Field, be referred to the committee to whom the same subject matter was referred.

Adopted.

On motion, the Association adjourned.

WALTER GEORGE SMITH,
Secretary pro tem.

REPORT

OF THE

TREASURER.

Dr.

o balance from last account	\$2502 28
" cash received—dues of members	3120 00
" " " —sale of Transactions	18 50
	————— \$5640 78

Cr.

1885.

Aug. 21.	By incidental expenses of eighth annual dinner	\$5 65
21.	C. A. Morrison, stenographer, on account	40 00
21.	stationery, eighth annual meeting	3 43
22.	Grand Union Hotel, on account eighth annual dinner	236 40
Sept. 16.	postage stamps	5 00
17.	stenographer, in full	40 00
21.	stamped envelopes and printing	24 00
Oct. 5.	rent of music hall	120 00
7.	printing address of John W. Stevenson	74 75
29.	printing report of special committee (D. D. Field, Chairman)	221 00
29.	Secretary, on account postage, etc.	50 00
	Amounts carried forward .	\$820 23 \$5640 78

TREASURER'S REPORT.

83

1885.	Amounts brought forward . . .	\$820 23	\$5640 78
Nov. 2.	By printing appendix to report of special committee (D. D. Field, Chairman) .	299 00	
6.	printing circulars	2 75	
6.	stamped envelopes and printing . . .	23 90	
Dec. 10.	letter book	1 00	
10.	"The Saratogian," printing and posting notices, etc., eighth annual meeting .	9 00	
1886.			
Feb. 9.	printing and binding eighth annual report and extra copies of papers read	1657 84	
9.	guards for mailing reports, labels, etc.	15 50	
23.	expenses of mailing and expressing eighth annual report to members and others	173 80	
Apr. 2.	postage stamps	15 25	
10.	session laws sent to John W. Stevenson, President	2 50	
May 20.	postage stamps	6 65	
28.	Secretary, for his expenses, on account	100 00	
June 21.	stamped envelopes and printing . . .	23 90	
21.	binding 250 copies eighth annual report	48 75	
21.	letter paper, circulars, etc., to date . .	19 35	
July 12.	printing circular for Special Committee on Delays, etc. (D. D. Field, Chairman)	13 00	
29.	Simeon E. Baldwin, sundry expenses .	34 20	
Aug. 2.	Cochran, Goddard & Co., expenses of ninth annual meeting	54 25	
4.	stamped envelopes and printing . . .	23 90	
4.	printing, postal cards, circulars, etc. .	19 00	
13.	shelving, etc., for storing books . . .	15 00	
13.	H. C. Esling, clerk to Treasurer, for year ending August 17, 1886 . . .	250 00	
13.	Secretary for balance of his Expenses for year ending August 17, 1886 . .	206 58	
Amounts carried forward .		\$3835 35	\$5640 78

AMERICAN BAR ASSOCIATION.

Amounts brought forward .	\$3835 35	\$5640 78
By telegrams during year	6 00	
expressage, boxing, etc., during year .	12 93	
Balance	1786 50	
		<hr/> \$5640 78

Which consists of—

Amount to the credit of the Treasurer	
in Commonwealth National Bank,	
Philadelphia	\$1765 00
Cash on hand	21 50
	<hr/>
	\$1786 50
	<hr/>

Respectfully submitted,

FRANCIS RAWLE,
Treasurer.

SARATOGA SPRINGS, August 13, 1886.

Audited and found correct.

HENRY WISE GARNETT,
GEORGE A. MERCER,
Committee.

August 13, 1886.

REPORT
OF THE
SECRETARY.

SARATOGA SPRINGS, *August 18, 1886*

This Association during the past year has been composed of seven hundred and two members. A recapitulation by states will be found on page 145 of last year's report.

Several matters were at the last meeting referred. These will be found on page 471. They are as follows:

Resolutions reported by the Committee on Jurisprudence and Law Reform relating to commissions on legislation. Referred to the Committee on Jurisprudence and Law Reform.

Resolution of D. H. Chamberlain, of New York, relating to the question whether the whipping post or other similar modes of punishment are legitimate forms or instruments for the punishment of crime. Referred to the Committee on Jurisprudence and Law Reform.

Resolution of E. F. Bullard, of New York, relating to the subject of general codification. Referred to the Special Committee on the Delay and Uncertainty of Judicial Administration.

Resolution of D. K. Tenney, of Wisconsin, relating to the question "Whether the rule of law which deprives the simple contract creditor of an insolvent debtor of all equitable relief against the frauds of the debtor until the claim has first been reduced to judgment, is now a senseless relic of antiquity which ought to be abolished by legislation." Referred to the Committee on Jurisprudence and Law Reform.

Resolution of Rufus King, of Ohio, relating to the subject of the relief of the Supreme Court of the United States. Referred to a special committee, with instructions to present the two reports (that of the Committee on Judicial Administration and Remedial Procedure and that of the Special Committee itself) to both branches of Congress.

Resolution of James O. Pierce, of Tennessee, relating to the subject of indeterminate sentences of convicted criminals. Referred to the Committee on Judicial Administration and Remedial Procedure.

Resolution of R. B. Roberts, of Illinois, relating to the subject of a form of procedure and acts for the consideration of the legislature of the several states, which will promote uniformity of proceedings in the settlement of estates of decedents who have left property in several states, etc. Referred to the Committee on Jurisprudence and Law Reform.

The usual programme of proceedings at this meeting has been printed and distributed and there are further copies for those who desire them.

There were three thousand copies of last year's report printed, of which twelve hundred and fifty were bound. The cost was about forty-five cents each in paper and about seventeen cents more for binding, which was in plain cloth.

Many persons, other than members and those to whom the reports are distributed by the Secretary under the By-Law, having applied for copies, the Executive Committee thought proper to order that they be sold at the rate of seventy-five cents in paper and one dollar in cloth, postage paid.

The fourth report is nearly exhausted, many copies having been destroyed by fire, so that the Secretary can no longer supply this report. He suggests that one thousand copies of this report should be reprinted, as the number of new members and others applying would render necessary at least that number.

Until last year the Secretary had felt at liberty to supply new members with all the back reports gratuitously on request,

but as the edition of some of the reports is now being rapidly reduced, and the advantage given to new members in this respect is gradually becoming unjust, the Executive Committee determined that new members should pay for back reports at the prices above named.

Five thousand copies of the Report of the Special Committee on Delay and Uncertainty in Judicial Administration have been printed as ordered, and about three thousand five hundred copies have been distributed. A sufficient number is now on hand to supply all who desire them.

The number of members who have signified to the Secretary their intention of attending this year's meeting is about two hundred.

The number now registered is about seventy. The members are requested to register at once, so that all may know who are here. During the sessions the register will be kept on the Secretary's desk, and at other times in the Reception Room of the American Bar Association, at the Grand Union Hotel, at the end nearest Congress Spring.

Respectfully submitted,

E. O. HINKLEY, *Secretary.*

LIST OF MEMBERS ELECTED

1886.

ALABAMA.

WAGNER, C. G. Siluria.

CALIFORNIA.

HAYMOND, CREED San Francisco.

CONNECTICUT.

COLBY, JAMES F. New Haven.

RAYNOLDS, EDWARD V. New Haven.

STODDARD, GOODWIN Bridgeport.

DELAWARE.

BRADFORD, EDWARD G. Wilmington.

COMEGYS, JOSEPH P. Dover.

MASSEY, GEORGE V. Dover.

DISTRICT OF COLUMBIA.

BLANKMAN, JOHN S. Washington.

GEORGIA.

GLENN, JOHN F. Atlanta.

IOWA.

ANDERSON, JOSEPH G. Keokuk.

KANSAS.

PECK, GEORGE R. Topeka.

LOUISIANA.

GOLDTHWAITE, ALFRED New Orleans.

KELLY, HENRY B. New Orleans.

MAINE.

BIRD, GEORGE E. Portland.

WOODMAN, EDWARD. Portland.

MARYLAND.

HUGHES, THOMAS	Baltimore.
ROGERS, ROBERT LYON	Baltimore.
STOCKETT, J. SCHAAFF	Annapolis.
MUNNIKHUYSEN, HOWARD	Baltimore.

MASSACHUSETTS.

HOWES, L. W.	Boston.
CURLEY, THOMAS	Boston.
RAMSEY, A. A.	Boston.
FISH, FREDERICK P.	Boston.
JOHNSON, BYRON B.	Waltham.
SCAIFE, LAURISTON L.	Boston.
SEARLE, GEORGE W.	Boston.
WHITE, GEORGE	Newton.

MICHIGAN.

PENDLETON, EDWARD W.	Detroit.
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MISSOURI.

ADAMS, E. B.	St. Louis.
LEWIS, J. W.	St. Louis.

MINNESOTA.

HOWE, JOHN D.	St. Paul.
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NEW HAMPSHIRE.

BARTLETT, CHARLES H.	Manchester.
BURNS, CHARLES H.	Wilton.
RAMSDELL, GEORGE A.	Nashua.

NEW JERSEY.

GRAY, SAMUEL H.	Camden.
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NEW YORK.

ABBOTT AUSTIN	New York.
AVERY, FRANK C.	Ovid.
BEACH, CHARLES F., JR.	New York.
BENTON, DANIEL L.	Hornellsville.
BISCHOFF, HENRY, JR.	New York.
BUTLER, CHARLES,	New York.
BUTLER, CHARLES HENRY	New York.

NEW YORK—Continued.

CARTER, JAMES C.	New York.
CHITTENDEN, L. E.	New York.
DA COSTA, CHARLES M.	New York.
FRANKENHEIMER, JOHN	New York.
GARDINER, CHARLES A.	New York.
GRINNELL, W. MORTON	New York.
GUILBERT, ALBERT B.	Rochester.
HAWKESWORTH, R. W.	New York.
HEGAMAN, W. A. O.	New York.
HOLT, GEORGE C.	New York.
HORNBLOWER, WILLIAM B.	New York.
HUBBARD, THOMAS H.	New York.
LEWIS, CHARLTON P.	New York.
MILBURN, JOHN G.	Buffalo.
MOOT, ADELBERT	Buffalo.
NICHOLS, GEORGE L., JR.	New York.
OLMSTEAD, DWIGHT H.	New York.
SCOTT, JAMES L.	Ballston Springs.
SEMPLE, MACKENSIE	New York.
SEWELL, ROBERT	New York.
STILLMAN, THOMAS E.	New York.
STRONG, ALONZO PAIGE	Schenectady.
TERRILL, H. L.	New York.
TURNER, HERBERT B.	New York.
VAN SLYCK, GEORGE W.	New York.
WILCOX, ANSLEY	Buffalo.
WINTHROP, WILLIAM	West Point.

OHIO.

DICKSON, J. H.	Wellington.
FERRIS, AARON A.	Cincinnati.
GILMER, T. J.	Warren.
GILSON, J. W.	Warren.
RAMSEY, WILLIAM M.	Cincinnati.
SHEAR, WILLIAM T.	Warren.
STUART, M.	Ravenna.
THAYER, A. A.	Warren.

OHIO—Continued.

HALE, JOHN C.	. . . . .	Cleveland.
HORTON, S. DANA	. . . . .	Pomeroy.
MURRAY, R. B.	. . . . .	Youngstown.

PENNSYLVANIA.

MORRIS, EFFINGHAM B.	. . . . .	Philadelphia.
McCLINTOCK, ANDREW H.	. . . . .	Wilkesbarre.
PARRISH, JOSEPH	. . . . .	Philadelphia.
PARSONS, HENRY C.	. . . . .	Williamsport.
WETHERILL, WILLIAM D.	. . . . .	Philadelphia.

SOUTH CAROLINA.

GILLAND, THOMAS M.	. . . . .	Kingston.
HASKELL, JOHN C.	Columbia.
RION, JAMES H.	Winnsboro.

VERMONT.

SHURTLIFF, S. C.	Montpelier.
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VIRGINIA.

GILLIAM, MARSHALL M.	Richmond.
LYONS, JAMES	Richmond.
WISE, JOHN S.	Richmond.

WEST VIRGINIA.

HIGGINBOTHAM, C. C.	. . . . .	Buchannon.
VAN WINKLE, W. W.	. . . . .	Parkersburg.

WISCONSIN

HERDEGEN, ADOLPH	. . . . .	Milwaukee.
HINER, J. W.	. . . . .	Fond du Lac.
MILLER, B. K.	. . . . .	Milwaukee.

RECAPITULATION.

States.	No. of Members.	States.	No. of Members.
ALABAMA	1	MINNESOTA	1
CALIFORNIA	1	NEW HAMPSHIRE	3
CONNECTICUT	3	NEW JERSEY	1
DELAWARE	3	NEW YORK	34
DISTRICT OF COLUMBIA	1	OHIO	11
GEORGIA	1	PENNSYLVANIA	5
IOWA	1	SOUTH CAROLINA	3
KANSAS	1	VERMONT	1
LOUISIANA	2	VIRGINIA	3
MAINE	2	WEST VIRGINIA	2
MARYLAND	4	WISCONSIN	3
MASSACHUSETTS	8		—
MICHIGAN	1		
MISSOURI	2	TOTAL	98

LIST OF DELEGATES.

MASSACHUSETTS.

GEORGE O. SHATTUCK	.	.	.	.	.	.	Boston.
LAURISTON L. SCAIFE	.	.	.	.	.	.	Boston.

MEMORANDUM.

The annual dinner was given on Friday evening, August 20th, at the Grand Union Hotel. William Allen Butler, of New York, presided. One hundred and eight members were present.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state (the Council shall be a standing committee on nominations for office); an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be Chairman of the Committee.

The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform ;
- On Judicial Administration and Remedial Procedure ;
- On Legal Education and Admissions to the Bar ;
- On Commercial Law ;
- On International Law ;
- On Publications ;
- On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each state and territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same state with the person nominated, or, in their absence, by members from a neighboring state or states, to the effect that the person nominated has the qualifications required by the Constitution, and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee,

without delay, to adopt suitable by-laws which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*state*," wherever used in this Constitution, shall be deemed to be equivalent to *state, territory*, and the *District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows :

- (a) Opening address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees :
 - On Jurisprudence and Law Reform ;
 - On Judicial Administration and Remedial Procedure ;
 - On Legal Education and Admissions to the Bar ;
 - On Commercial Law ;
 - On International Law ;
 - On Publications ;
 - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each state Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In states where no state Bar Association exists, any city or county Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country, or of any state, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses and papers read before the Association, may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies to each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges, by which our *Transactions* can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental

affairs; and also that the Secretary exchange our *Transactions* with those of the state and local bar associations; and that all books thus acquired be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the latter association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the Governor, and to the Chief Judge of the court of last resort of each state, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of Office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two

members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association.

ANNUAL DUES.

XIII.—The Annual dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this by-law, within sixty days after each meeting, to all members in default.

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of all back dues. *Provided* such restoration shall be recommended by a member of the Local Council of his state, or in their absence, at an annual meeting by any two members of the Association.

PRESIDENT,

THOMAS J. SEMMES,

New Orleans, Louisiana.

SECRETARY,

EDWARD OTIS HINKLEY,

43, North Charles Street, Baltimore, Maryland.

TREASURER,

FRANCIS RAWLE,

402, Walnut Street, Philadelphia, Pennsylvania.

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LUKE P. POLAND, *St. Johnsbury, Vermont*, CHAIRMAN.

SIMEON E. BALDWIN, *New Haven, Connecticut.*

C. C. BONNEY, *Chicago, Illinois.*

EX OFFICIO,

EDWARD OTIS HINKLEY, SECRETARY.

FRANCIS RAWLE, TREASURER.

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FISHER, WILLIAM A.	Baltimore, Md.
FLEMMING, JAMES	Jersey City, N. J.
FLOWER, JAMES M.	Chicago, Ill.
FOLLETT, MARTIN D.	Marietta, O.
FORCE, MANNING F.	Cincinnati, O.
FORT, J. FRANK	Newark, N. J.
FOX, AUSTEN G.	New York, N. Y.
FOX, EDWARD J.	Easton, Pa.
FOX, WILLIAM H.	Taunton, Mass.
FRANKENHEIMER, JOHN.	New York, N. Y.
FRENCH, WILLIAM B.	Boston, Mass.
GALT, SMITH P.	St. Louis, Mo.
GARDINER, CHARLES A.	New York, N. Y.
GARNETT, HENRY WISE.	Washington, D. C.
GARNETT, THEODORE S.	Norfolk, Va.
GARRARD, WILLIAM	Savannah, Ga.
GARRETSON, A. Q.	Jersey City, N. J.
GASTON, WILLIAM	Boston, Mass.
GAUT, JOHN M.	Nashville, Tenn.
GILBERT, LYMAN D.	Harrisburg, Pa.
GILLAND, JOHN D.	Vicksburg, Miss.
GILLAND, THOMAS M.	Kingsree, S. C.
GILLIAM, MARSHALL M.	Richmond, Va.
GILMER, T. J.	Warren, O.
GILMORE, THOMAS	New Orleans, La.
GILSON, J. W.	Warren, O.
GLENN, JOHN F.	Atlanta, Ga.
GLOVER, JOHN H.	New York, N. Y.
GOBLE, L. SPENCER	Newark, N. J.
GOEBEL, WILLIAM	Covington, Ky.
GOLDTHWAITE, ALFRED	New Orleans, La.
GOODWIN, C. RIDGELY,	Baltimore, Md.
GOODWIN, FRANK	Boston, Mass.
GORMAN, CHARLES E.	Providence, R. I.
GOULD, A. P.	Thomaston, Me.
GRANGER, M. M.	Zanesville, O.
GRAY, GEORGE	Wilmington, Del.
GRAY, SAMUEL H.	Camden, N. J.
GREEN, EDWIN P.	Akron, O.

GREGORY, J. C.	Madison, Wis.
GREGORY, JOHN P.	Pawtucket, R. I.
GRESHAM, WALTER	Galveston, Tex.
GRESHAM, WALTER Q.	Indianapolis, Ind.
GRINNELL, W. MORTON	New York, N. Y.
GRIFFIN, LEVI T.	Detroit, Mich.
GRISWOLD, SENECA O.	Cleveland, O.
GROESBECK, WILLIAM S.	Cincinnati, O.
GRUBB, IGNATIUS C.	Wilmington, Del.
GUILBERT, ALBERT B.	Rochester, N. Y.
GUNCKEL, LEWIS B.	Dayton, O.
GUTHRIE, GEORGE W.	Pittsburgh, Pa.
GWINN, CHARLES J. M.	Baltimore, Md.
HAHN, WILLIAM J.	Minneapolis, Minn.
HALE, JOHN C.	Cleveland, O.
HALE, MATTHEW	Albany, N. Y.
HALL, JOHN J.	Akron, O.
HALSEY, JEREMIAH	Norwich, Conn.
HAMERSLEY, WILLIAM	Hartford, Conn.
HAMILTON, ALEXANDER	Petersburg, Va.
HAMILTON, GEORGE EARNEST	Washington, D. C.
HAMMOND, N. J.	Atlanta, Ga.
HAMMOND, WILLIAM G.	St. Louis, Mo.
HANDLEY, JOHN	Scranton, Pa.
HANDY, JOHN H.	Baltimore, Md.
HARRISON, BENJAMIN	Indianapolis, Ind.
HARRISON, RICHARD A.	Columbus, O.
HASKELL, JOHN C.	Columbia, S. C.
HASKELL, THOMAS H.	Portland, Me.
HAWKESWORTH, R. W.	New York, N. Y.
HAYMOND, CREED	San Francisco, Cal.
HAYNES, DANIEL A.	Dayton, O.
HEGAMAN, W. A. O.	New York, N. Y.
HEMENWAY, ALFRED	Boston, Mass.
HEMPHILL, JOHN J.	Chester, S. C.
HEMPHILL, JOSEPH	West Chester, Pa.
HENDERSON, J. B.	St. Louis, Mo.
HENDERSON, HENRY P.	Mason, Mich.
HENDRICKS, ABRAM W.	Indianapolis, Ind.
HERDEGEN, ADOLPH	Milwaukee, Wis.
HEREFORD, FRANK	Union, W. Va.
HERMAN, HENRY M.	New York, N. Y.
HEVERIN, JAMES H.	Philadelphia, Pa.
HIGGINBOTHAM, C. C.	Buckhannon, W. Va.
HIGGINS, ANTHONY	Wilmington, Del.

HILL, WALTER B.	Macon, Ga.
HINCKLEY, ROBERT H.	Philadelphia, Pa.
HINER, J. W.	Fond du Lac, Wis.
HINKLEY, EDWARD OTIS	Baltimore, Md.
HITCHCOCK, HENRY	St. Louis, Mo.
HOADLY, GEORGE	Cincinnati, O.
HODGE, NOAH	Akron, O.
HOFFMAN, CHARLES W.	Washington, D. C.
HOLMES, GEORGE F.	Portland, Me.
HOLT, GEORGE C.	New York, N. Y.
HOOKE, DAVID G.	Milwaukee, Wis.
HORD, OSCAR B.	Indianapolis, Ind.
HORNBLOWER, WILLIAM B.	New York, N. Y.
HORNER, JOHN J.	Helena, Ark.
HORTON, S. DANA	Pomeroy, O.
HOSMER, GEORGE S.	Detroit, Mich.
HOUGH, WARWICK	St. Louis, Mo.
HOCK, GEORGE W.	Dayton, O.
HOUSTON, LOCK E.	Aberdeen, Miss.
HOWE, ARCHIBALD M.	Boston, Mass.
HOWE, JOHN D.	St. Paul, Minn.
HOWE, W. W.	New Orleans, La.
HOWES, L. W.	Boston, Mass.
HOWRY, CHARLES B.	Oxford, Miss.
HUBBARD, THOMAS H.	New York, N. Y.
HUDD, THOMAS R.	Green Bay, Wis.
HUEY, SAMUEL B.	Philadelphia, Pa.
HUNT, CARLETON	New Orleans, La.
HUNT, SAMUEL F.	Cincinnati, O.
HURD, FRANCIS W.	Boston, Mass.
HUTCHINS, WALDO	New York, N. Y.
HUTCHINSON, JOHN A.	Parkersburg, W. Va.
HUGHES, THOMAS	Baltimore, Md.
HYDE, ALVAN P.	Hartford, Conn.
ISAACS, M. S.	New York, N. Y.
JACKSON, A. A.	Janesville, Wis.
JACKSON, HENRY	Atlanta, Ga.
JENKINS, JAMES G.	Milwaukee, Wis.
JEWETT, HUGH J.	New York, N. Y.
JOHNSON, BYRON B.	Waltham, Mass.
JOHNSON, EDGAR M.	Cincinnati, O.
JOHNSON, WILLIAM E.	Woodstock, Vt.
JOHNSTON, JAMES M.	Washington, D. C.
JOHNSTON, JOSEPH R.	Youngstown, O.
JOHNSTON, SANDERS W.	Washington, D. C.

JOHNSTONE, GEORGE	Newbury, S. C.
JONES, ASAHIEL W.	Youngstown, O.
JONES, CHARLES C., JR.	Augusta, Ga.
JONES, ISAAC D.	Baltimore, Md.
JONES, LEONARD A.	Boston, Mass.
JUDSON, FREDERICK N.	St. Louis, Mo.
KAERCHER, GEORGE R.	Philadelphia, Pa.
KAUFFMAN, A. J.	Columbia, Pa.
KAUFFMAN, B. F.	Des Moines, Ia.
KEASBEY, ANTHONY Q.	Newark, N. J.
KEHR, EDWARD C.	St. Louis, Mo.
KELLOGG, STEPHEN W.	Waterbury, Conn.
KELLEY, HENRY B.	New Orleans, La.
KENNARD, JOHN H.	New Orleans, La.
KENT, CHARLES A.	Detroit, Mich.
KEOGH, THOMAS B.	Greensboro, N. C.
KERNAN, FRANCIS	Utica, N. Y.
KING, RUFUS	Cincinnati, O.
KIRCHNER, OTTO	Detroit, Mich.
KNIGHT, EDWARD B.	Charleston, W. Va.
KNOTT, A. LEO	Baltimore, Md.
KOERNER, GUSTAVE	Belleville, Ill.
KRUTTSCHNITT, ERNEST B.	New Orleans, La.
KULP, GEORGE B.	Wilkesbarre, Pa.
LADD, NATH. W.	Boston, Mass.
LADD, WILLIAM S.	Lancaster, N. H.
LAMBERTON, C. L.	New York, N. Y.
LANCASTER, CHARLES C.	Washington, D. C.
LARNER, JOHN B.	Washington, D. C.
LATHROP, GARDINER	Kansas City, Mo.
LATHROBE, JOHN H. B.	Baltimore, Md.
LAWRENCE, ISAAC	Newport, R. I.
LAWTON, ALEXANDER R.	Savannah, Ga.
LAWTON, ALEXANDER R., JR.	Savannah, Ga.
LAZARUS, H. L.	New Orleans, La.
LEEDS, CHARLES C.	New York, N. Y.
LEGENDRE, JAMES	New Orleans, La.
LEIGH, JOSEPH E.	Columbus, Miss.
LEVI, ALBERT L.	Minneapolis, Minn.
LEWIS, CHARLTON T.	New York, N. Y.
LEWIS, J. W.	St. Louis, Mo.
LIBBY, CHARLES F.	Portland, Me.
LISTER, CHARLES C.	Philadelphia, Pa.
LITTLE, WILLIAM E.	Tunkhannock, Pa.
LIVINGSTON, J. B.	Lancaster, Pa.

LOGAN, THOMAS A.	Cincinnati, O.
LOUDON, DEWITT C.	Georgetown, O.
LOVELY, JOHN A.	Albert Lea, Minn.
LYON, R. F.	Macon, Ga.
LYONS, JAMES	Richmond, Va.
MACFARLAND, W. W.	New York, N. Y.
MACKALL, WILLIAM W., JR.	Savannah, Ga.
MACKOY, WILLIAM H.	Cincinnati, O.
MACVEAGH, WAYNE	Philadelphia, Pa.
MADILL, GEORGE A.	St. Louis, Mo.
MAGRATH, A. G.	Charleston, S. C.
MANDERSON, CHARLES F.	Omaha, Neb.
MARSHALL, CHARLES	Baltimore, Md.
MARSHALL, JOSHUA N.	Lowell, Mass.
MARSTON, GILMAN	Exeter, N. H.
MASON, EDWARD G.	Chicago, Ill.
MASON, JOHN T. (JOHN T. MASON, R.)	Baltimore, Md.
MASSEY, GEORGE D.	Dover, Del.
MATHEWS, ALBERT	New York, N. Y.
MATTHEWS, STANLEY	Cincinnati, O.
MAXWELL, J. AUDLEY	Boston, Mass.
MEDDAUGH, ELIJAH W.	Detroit, Mich.
MELDRIM, P. W.	Savannah, Ga.
MELOY, WILLIAM A.	Washington, D. C.
MERCER, GEORGE A.	Savannah, Ga.
MERCER, GEORGE G.	Philadelphia, Pa.
MERRICK, EDWIN T.	New Orleans, La.
MILBURN, JOHN G.	Buffalo, N. Y.
MILLER, B. K.	Milwaukee, Wis.
MILLER, FRANK H.	Augusta, Ga.
MILLER, H. C.	New Orleans, La.
MILLER, N. DU BOIS	Philadelphia, Pa.
MILLER, WM. K.	Augusta, Ga.
MITCHELL, JAS. T.	Philadelphia, Pa.
MOAK, N. C.	Albany, N. Y.
MONAGHAN, ROBERT E.	West Chester, Pa.
MONROE, WILLIAM A.	Boston, Mass.
MONTGOMERY, WILLIAM W.	Augusta, Ga.
MOORE, JOHN M.	Little Rock, Ark.
MOORE, J. Z.	Owensboro, Ky.
MOORMAN, H. C.	Somerville, Tenn.
MOOT, ADELBERT	Buffalo, N. Y.
MORDECAI, T. MOULTRIE	Charleston, S. C.
MORRIS, EFFINGHAM B.	Philadelphia, Pa.
MORRIS, M. F.	Washington, D. C.

MORRIS, S. W.	Ironton, O.
MORSE, A. PORTER	Washington, D. C.
MUNFORD, JAMES E.	St. Louis, Mo.
MUNGER WARREN	Dayton, O.
MUNNIKHUYSEN, HOWARD,	Baltimore, Md.
MUNSON, C. LA RUE	Williamsport, Pa.
MURPHY, D. F.	Washington, D. C.
MURPHY, THEODORE D.	Woodstock, Ill.
MURRAY, R. B.	Youngstown, O.
MYERS, JAMES J.	Boston, Mass.
MYERS, NATHANIEL	New York, N. Y.
MCATEE, JOHN L.	Hagerstown, Md.
MCCALEB, E. HOWARD	New Orleans, La.
MCCAMMON, JOSEPH K.	Washington, D. C.
MCCARTER, THOMAS N.	Newark, N. J.
MCCCLINTOCK, ANDREW H.	Wilkesbarre, Pa.
MCCCLINTOCK, ANDREW T.	Wilkesbarre, Pa.
MCCCLINTOCK, WILLIAM T.	Cincinnati, O.
MCCRADY, EDWARD, JR.	Charleston, S. C.
MCCULLOUGH, JOHN G.	N. Bennington, Vt.
McFARLAND, L. B.	Memphis, Tenn.
McINTOSH, DAVID G.	Towsontown, Md.
McLEARY, J. H.	San Antonio, Texas.
McNEAL, ALBERT T.	Bolivar, Tenn.
NASH, STEPHEN P.	New York, N. Y.
NEBEKER, LUCAS	Covington, Ind.
NELSON, HOMER A.	Poughkeepsie, N. Y.
NETTLES, CLEMENT S.	Darlington, S. C.
NEWMAN, EMILE	Savannah, Ga.
NICKOLS, GEORGE L., JR.	New York, N. Y.
NOBLE, GUY C.	St. Albans, Vt.
NOBLE, JOHN W.	St. Louis, Mo.
NORTH, E. D.	Lancaster, Pa.
NORTH, HUGH M.	Columbia, Pa.
O'BRIEN, THOMAS J.	Grand Rapids, Mich.
OLMSTEAD, AARON B.	Saratoga Springs, N. Y.
OLMSTEAD, DWIGHT H.	New York, N. Y.
ORR, J. A.	Columbus, Miss.
OSBORNE, EDWIN S.	Wilkesbarre, Pa.
OUTERBRIDGE, ALBERT A.	Philadelphia, Pa.
OVIATT, EDWARD	Akron, O.
OWENS, GEORGE W.	Savannah, Ga.
PACKER, JOHN B.	Sunbury, Pa.
PAGE, HENRY F.	Circleville, O.
PAGE, LEGH R.	Richmond, Va.

PALMER, HENRY W.	Wilkesbarre, Pa.
PALMER, JOHN M.	Springfield, Ill.
PARDEE, DON A.	New Orleans, La.
PARDEE, HENRY E.	New Haven, Conn.
PARKER, ALTON B.	Kingston, N. Y.
PARKER, AMASA J.	Albany, N. Y.
PARKER, CORTLANDT	Newark, N. J.
PARKER, JAMES	New York, N. Y.
PARKER, R. WAYNE	Newark, N. J.
PARRISH, JOSEPH	Philadelphia, Pa.
PARSONS, HENRY C.	Williamsport, Pa.
PATTERSON, C. STUART	Philadelphia, Pa.
PATTERSON, T. ELLIOTT	Ilion, N. Y.
PAUL, NORMAN	Woodstock, Vt.
PAYNE, JAMES G.	Washington, D. C.
PEABODY, CHARLES A.	New York, N. Y.
PECK, GEORGE R.	Topeka, Kan.
PECKHAM, FRANCIS B.	Newport, R. I.
PENDLETON, EDWARD W.	Detroit, Mich.
PENNYPACKER, CHARLES H.	West Chester, Pa.
PENNYPACKER, SAMUEL W.	Philadelphia, Pa.
PERKINS, SAMUEL C.	Philadelphia, Pa.
PERRY, JOHN H.	Southport, Conn.
PETTIT, SILAS W.	Philadelphia, Pa.
PHELES, EDWARD J.	Burlington, Vt.
PHELPS, WM. WALTER	New York, N. Y.
PIERCE, JAMES O.	Memphis, Tenn.
PIKE, AUSTIN F.	Franklin, N. H.
PINNEY, SILAS U.	Madison, Wis.
PIRTLE, JAMES S.	Louisville, Ky.
PLATT, JOHNSON T.	New Haven, Conn.
POCHÉ, F. P.	New Orleans, La.
POLAND, LUKE P.	St. Johnsbury, Vt.
POND, ASHLEY	Detroit, Mich.
PORTER, CHARLES W.	Montpelier, Vt.
POTTER, ORLANDO B.	New York, N. Y.
POWERS, CHARLES E.	Boston, Mass.
PRATT, WALLACE	Kansas City, Mo.
PRESTON, WILLIAM	Lexington, Ky.
PRICE, J. SERGEANT	Philadelphia, Pa.
PRICHARD, FRANK P.	Philadelphia, Pa.
PRIME, RALPH E.	Yonkers, N. Y.
PROUT, JOHN	Rutland, Vt.
PRYOR, ROGER A.	Brooklyn, N. Y.
PUTNAM, HENRY W.	Boston, Mass.

RAMSEY, WILLIAM M.	Cincinnati, O.
RAMSDELL, GEORGE A.	Nashua, N. H.
RANDALL, E. M.	Jacksonville, Fla.
RANDOLPH, JOSEPH F.	Jersey City, N. J.
RANNEY, A. A.	Boston, Mass.
RANNEY, HENRY C.	Cleveland, O.
RANNEY, RUFUS P.	Cleveland, O.
RAWLE, FRANCIS	Philadelphia, Pa.
RAWLE, WM. HENRY	Philadelphia, Pa.
RAYNOLDS, EDWARD D.	New Haven, Conn.
REED, HENRY	Philadelphia, Pa.
REESE, WILLIAM M.	Washington, Ga.
REEVE, FELIX A.	Washington, D. C.
REYNOLDS, R. O.	Aberdeen, Miss.
REYNOLDS, SAMUEL H.	Lancaster, Pa.
RICHARDSON, DANIEL S.	Lowell, Mass.
RICHARDSON, GEORGE F.	Lowell, Mass.
RICHEY, AUGUSTUS G.	Trenton, N. J.
RION, JAMES H.	Winnsboro, S. C.
RIPLEY, JAMES M.	Providence, R. I.
ROBB, SAMUEL	Philadelphia, Pa.
ROBERTS, DANIEL	Burlington, Vt.
ROBERTS, JOSEPH K., JR.	Upper Marlboro, Md.
ROBERTSON, WILLIAM J.	Charlottesville, Va.
ROELKER, WILLIAM G.	Providence, R. I.
ROGERS, GEORGE W.	Norristown, Pa.
ROGERS, HENRY WADE	Ann Arbor, Mich.
ROGERS, ROBERT LYON	Baltimore, Md.
ROGERS, SHERMAN S.	Buffalo, N. Y.
ROSE, U. M.	Little Rock, Ark.
RUNNELS, JOHN S.	Des Moines, Ia.
RUSSELL, CHARLES T., JR.	Cambridge, Mass.
RUSSELL, TALCOTT H.	New Haven, Conn.
RUSSELL, WILLIAM G.	Boston, Mass.
RUSSELL, W. H. H.	New York, N. Y.
SANBORN, JOHN B.	St. Paul, Minn.
SANBORN, WALTER H.	St. Paul, Minn.
SANDERS, DALLAS	Philadelphia, Pa.
SANDERS, WILBUR F.	Helena, Mon.
SANFORD, ORLIN M.	New York, N. Y.
SAULSBURY, WILLARD, JR.	Wilmington, Del.
SCAIFE, LAURISTON L.	Boston, Mass.
SCHENCK, ABRAM V.	New Brunswick, N. J.
SCHLEY, BRADLEY G.	Milwaukee, Wis.
SCHOONMAKER, AUGUSTUS, JR.	Kingston, N. Y.

SCOTT, C. SUYDAM	Lexington, Ky.
SCOTT, JAMES L.	Ballston Springs, N. Y.
SEARLE, GEORGE W.	Boston, Mass.
SEARS, PHILIP H.	Boston, Mass.
SEIBERT, W. N.	New Bloomfield, Pa.
SELDEN, JOHN	Washington, D. C.
SEMMES, THOMAS J.	New Orleans, La.
SEMPLE, HENRY C.	Montgomery, Ala.
SEMPLE, MACKENSIE	New York, N. Y.
SEWELL, ROBERT	New York, N. Y.
SEYMOUR, EDWARD W.	Litchfield, Conn.
SHACK, FERDINAND	New York, N. Y.
SHARP, GEORGE M.	Baltimore, Md.
SHARP, ISAAC S.	Philadelphia, Pa.
SHATTUCK, GEORGE O.	Boston, Mass.
SHAW, R. K.	Marietta, O.
SHEPARD, ELLIOT F.	New York, N. Y.
SHERMAN, E. B.	Chicago, Ill.
SHIPMAN, J. G.	Belvidere, N. J.
SHIRAS, GEORGE, JR.	Pittsburgh, Pa.
SHIRAS, OLIVER P.	Dubuque, Ia.
SHIRLEY, JOHN M.	Andover, N. H.
SHOEMAKER, L. D.	Wilkesbarre, Pa.
SHURTLIFF, S. C.	Montpelier, Vt.
SIMONTON, C. H.	Charleston, S. C.
SIMS, W. H.	Columbus, Miss.
SMALLEY, B. B.	Burlington, Vt.
SMITH, CHAUNCEY	Boston, Mass.
SMITH, LUTHER R.	Mount Sterling, Ala.
SMITH, NELSON	New York, N. Y.
SMITH, WALTER GEORGE	Philadelphia, Pa.
SMYTHE, AUGUSTINE T.	Charleston, S. C.
SOMMERVILLE, J. B.	Wellsburg, W. Va.
SOUTHARD, CHARLES B.	Boston, Mass.
SPAULDING, JOHN	Boston, Mass.
SPEAR, WILLIAM T.	Warren, O.
SPEIR, GILBERT M., JR.	New York, N. Y.
SPRAGUE, E. C.	Buffalo, N. Y.
SPRING, JOHN L.	Lebanon, N. H.
STANTON, LEWIS E.	Hartford, Conn.
STERNE, SIMON	New York, N. Y.
STETSON, CHARLES P.	Bangor, Me.
STEVENS, HIRAM F.	St. Paul, Minn.
STEWART, JOHN	Chambersburg, Pa.
STEWART, W. F. BAY	York, Pa.

STICKNEY, ALBERT	New York, N. Y.
STILES, EDWARD H.	Ottumwa, Ia.
STILLMAN, THOMAS E.	New York, N. Y.
STILLWELL, L.	Erie, Kan.
STOCKBRIDGE, HENRY	Baltimore, Md.
STOCKDALE, F. S.	Cuero, Tex.
STOCKETT, J. SCHEAFF	Annapolis, Md.
STOREY, MOORFIELD	Boston, Mass.
STORROW, JAMES J.	Boston, Mass.
STRONG, ALONZO PAIGE	Schenectady, N. Y.
STROUT, A. A.	Portland, Me.
STUART, M.	Ravenna, O.
STURGES, E. B.	Scranton, Pa.
SULLIVAN, ALGERNON S.	New York, N. Y.
SWAIN, CHARLES M.	Philadelphia, Pa.
SWAYNE, WAGER	New York, N. Y.
SWIFT, M. G. B.	Fall River, Mass.
TAPPAN, JAMES C.	Helena, Ark.
TAUSIG, JAMES	St. Louis, Mo.
TAYLOR, JOHN D.	New York, N. Y.
TAYLOR, JOHN W.	Newark, N. J.
TAYLOR, R. S.	Fort Wayne, Ind.
TENNEY, DANIEL K.	Madison, Wis.
TEENE, FREDERICK H.	Newark, N. J.
TERRILL, H. L.	New York, N. Y.
THAYER, R. A.	Warren, O.
THOMPSON, SEYMOUR D.	St. Louis, Mo.
THORNTON, R. A.	Lexington, Ky.
THURBER, HENRY	Detroit, Mich.
THURSTON, BENJAMIN F.	Providence, R. I.
THURSTON, JOHN D.	Providence, R. I.
THWEATT, P. O.	Helena, Ark.
TILLINGHAST, JAMES	Providence, R. I.
TODD, A. J.	New York, N. Y.
TOMPKINS, HAMILTON B.	New York, N. Y.
TOMPKINS, HENRY B.	Atlanta, Ga.
TOMPKINS, HENRY C.	Montgomery, Ala.
TORREY, J. L.	St. Louis, Mo.
TOTTEN, ENOCH	Washington, D. C.
TOWNSEND, WASHINGTON,	West Chester, Pa.
TOWNSEND, WILLIAM K.	New Haven, Conn.
TRABUE, E. F.	Louisville, Ky.
TREADWELL, JOHN P.	Boston, Mass.
TROY, D. S.	Montgomery, Ala.
TRUMBULL, LYMAN	Chicago, Ill.

TUCKER, J. RANDOLPH	Lexington, Va.
TUPPER, A. P.	Middlebury, Vt.
TURNER, EDWARD W.	Plattsburg, Mo.
TURNER, HERBERT B.	New York, N. Y.
TUTHILL, RICHARD S.	Chicago, Ill.
UPSON, WILLIAM H.	Akron, O.
USHER, EDWARD PRESTON	Boston, Mass.
VAN BUREN, THOMAS B.	Englewood, N. J.
VANDERPOEL, A. J.	New York, N. Y.
VAN SLYCK, GEORGE W.	New York, N. Y.
VAN SLYCK, NICHOLAS	Providence, R. I.
VAN WINKLE, W. W.	Parkersburg, W. Va.
VAUX, RICHARD	Philadelphia, Pa.
VENABLE, RICHARD M.	Baltimore, Md.
VILAS, WILLIAM F.	Madison, Wis.
VREDENBURGH, JAMES B.	Jersey City, N. J.
VROOM, GARRETT D. W.	Trenton, N. J.
WADDELL, WILLIAM B.	West Chester, Pa.
WAEELDER, JACOB	San Antonio, Texas.
WAGNER, C. G.	Siluria, Ala.
WAGNER, SAMUEL	Philadelphia, Pa.
WAIT, ALBERT S.	Newport, N. H.
WALKER, W. H.	Ludlow, Vt.
WARD, JOHN E.	New York, N. Y.
WARNER, JOSEPH B.	Boston, Mass.
WARREN, IRA D.	New York, N. Y.
WATROUS, GEORGE H.	New Haven, Conn.
WATSON, D. T.	Pittsburgh, Pa.
WAUL, T. N.	Galveston, Tex.
WEADOCK, THOMAS A. E.	Bay City, Mich.
WEART, JACOB	Jersey City, N. J.
WEBB, NATHAN	Portland, Me.
WEBB, WILLIAM B.	Washington, D. C.
WEEKS, WILLIAM R.	Newark, N. J.
WEGG, DAVID S.	Milwaukee, Wis.
WELLS, H. H.	Washington, D. C.
WELLS, WILLIAM P.	Detroit, Mich.
WETHERILL, WILLIAM D.	Philadelphia, Pa.
WHEELER, EVERETT P.	New York, N. Y.
WHEELER, WILLIAM	New York, N. Y.
WHITE, GEORGE	Newton, Mass.
WHITTAKER, EGBERT	Saugerties, N. Y.
WHITTLE, L. N.	Macon, Ga.
WILCOX, ANSLEY	Buffalo, N. Y.
WILLARD, EDWARD N.	Scranton, Pa.

WILLCOX, W. F.	Deep River, Conn.
WILLIAMS, EDWARD CALVIN	Baltimore, Md.
WILLIAMS, WASHINGTON B.	Jersey City, N. J.
WILLIAMSON, SAMUEL E.	Cleveland, O.
WILLIS, BENJAMIN A.	New York, N. Y.
WILLISTON, W. C.	Redwing, Minn.
WILLSON, A. E.	Louisville, Ky.
WILMER, SKIPWITH	Baltimore, Md.
WILMER, W. N.	New York, N. Y.
WILSON, F. A.	Bangor, Me.
WILSON, JOHN R.	Indianapolis, Ind.
WILSON, NATHANIEL	Washington, D. C.
WILSON, THOMAS	Winona, Minn.
WILSON, WILLIAM C.	Lafayette, Ind.
WILSON, WILLIAM R.	Elizabeth, N. J.
WILTBank, WILLIAM W.	Philadelphia, Pa.
WING, JOSEPH A.	Montpelier, Vt.
WINKLER, FREDERICK C.	Milwaukee, Wis.
WINTHROP, WILLIAM	West Point, N. Y.
WISE, JOHN S.	Richmond, Va.
WITHROW, JAMES E.	St. Louis, Mo.
WOLVERTON, SIMON P.	Sunbury, Pa.
WOODMAN, EDWARD	Portland, Me.
WOODRUFF, GEORGE M.	Litchfield, Conn.
WOODRUFF, ROBERT S.	Trenton, N. J.
WOODS, CHARLES A.	Marion, S. C.
WOODARD, CHARLES F.	Bangor, Me.
WOOLWORTH, J. M.	Omaha, Neb.
WRIGHT, GEORGE G.	Des Moines, Ia.
WRIGHT, THOMAS S.	Des Moines, Ia.
YOUNG, EDMOND S.	Dayton, O.
YOUNG, GEORGE B.	St. Paul, Minn.
YOUNG, HENRY E.	Charleston, S. C.
ZEIGLER, CHARLES F.	Philadelphia, Pa.

MEMBERS—AUGUST, 1886-1887.

ALABAMA.

BRAGG, WALTER L.	.	.	.	Montgomery.
CLARK, GAYLORD B.	.	.	.	Mobile.
CLOPTON, DAVID	.	.	.	Montgomery.
SEMPLE, HENRY C.	.	.	.	Montgomery.
SMITH, LUTHER R.	.	.	.	Mount Sterling.
TOMPKINS, HENRY C.	.	.	.	Montgomery.
TROY, D. S.	.	.	.	Montgomery.
WAGNER, C. G.	.	.	.	Siluria.

ARKANSAS.

COHN, M. M.	.	.	.	Little Rock.
DU VAL, BENJAMIN T.	.	.	.	Fort Smith.
HORNER, JOHN J.	.	.	.	Helena.
MOORE, JOHN M.	.	.	.	Little Rock.
ROSE, U. M.	.	.	.	Little Rock.
TAPPAN, JAMES C.	.	.	.	Helena.
THWEATT, P. O.	.	.	.	Helena.

CALIFORNIA.

EYRE, MANUEL	.	.	.	San Francisco.
HAYMOND, CREED	.	.	.	San Francisco.

CONNECTICUT.

BALDWIN, SIMEON E.	.	.	.	New Haven.
BREWSTER, LYMAN D.	.	.	.	Danbury.
COLBY, JAMES F.	.	.	.	New Haven.
CURTIS, JULIUS B.	.	.	.	Stamford.
HALSEY, JEREMIAH	.	.	.	Norwich.
HAMERSLEY, WILLIAM	.	.	.	Hartford.
HYDE, ALVAN P.	.	.	.	Hartford.
PARDEE, HENRY E.	.	.	.	New Haven.
PERRY, JOHN H.	.	.	.	Southport.
PHILLIPS, GILBERT W.	.	.	.	Putnam.
PLATT, JOHNSON T.	.	.	.	New Haven.
RAYNOLDS, EDWARD V.	.	.	.	New Haven.
RUSSELL, TALCOTT H.	.	.	.	New Haven.

CONNECTICUT—Continued.

SEYMOUR, EDWARD W.	.	.	.	Litchfield.
STANTON, LEWIS E.	.	.	.	Hartford.
TOWNSEND, WILLIAM K.	.	.	.	New Haven.
WATROUS, GEORGE H.	.	.	.	New Haven.
WILLCOX, W. F.	.	.	.	Deep River.
WOODRUFF, GEORGE M.	.	.	.	Litchfield.

DELAWARE.

BATES, GEORGE H.	.	.	.	Wilmington.
BAYARD, THOMAS F.	.	.	.	Wilmington.
BRADFORD, EDWARD G.	.	.	.	Wilmington.
COMEGYS, JOSEPH P.	.	.	.	Dover.
GRAY, GEORGE	.	.	.	Wilmington.
GRUBB, IGNATIUS C.	.	.	.	Wilmington.
HIGGINS, ANTHONY	.	.	.	Wilmington.
MASSEY, GEORGE V.	.	.	.	Dover.
SAULSBURY, WILLARD, JR.	.	.	.	Wilmington.

DISTRICT OF COLUMBIA.

APPLEBY, GEORGE F.	.	.	.	Washington.
ARMSTRONG, WILLIAM H.	.	.	.	Washington.
ASHTON, J. HUBLEY	.	.	.	Washington.
BLANKMAN, JOHN S.	.	.	.	Washington.
BOND, S. R.	.	.	.	Washington.
BROWNING, FRANK T.	.	.	.	Washington.
CUPPY, F. P.	.	.	.	Washington.
DARLINGTON, JOSEPH J.	.	.	.	Washington.
EARLE, WILLIAM E.	.	.	.	Washington.
ELLIOT, CHARLES A.	.	.	.	Washington.
GARNETT, HENRY WISE	.	.	.	Washington.
HAMILTON, GEORGE EARNEST	.	.	.	Washington.
HOFFMAN, CHARLES W.	.	.	.	Washington.
JOHNSTON, JAMES M.	.	.	.	Washington.
JOHNSTON, SANDERS W.	.	.	.	Washington.
LANCASTER, CHARLES C.	.	.	.	Washington.
LARNER, JOHN B.	.	.	.	Washington.
MCCAMMON, JOSEPH K.	.	.	.	Washington.
MELoy, WILLIAM A.	.	.	.	Washington.
MORRIS, M. F.	.	.	.	Washington.
MORSE, A. PORTER	.	.	.	Washington.
MURPHY, D. F.	.	.	.	Washington.
PAYNE, JAMES G.	.	.	.	Washington.
BEEVE, FELIX A.	.	.	.	Washington.

DISTRICT OF COLUMBIA—Continued.

SELDEN, JOHN . . .	. Washington.
TOTTEN, ENOCH . . .	. Washington.
WEBB, WILLIAM B. . .	. Washington.
WELLS, H. H. . . .	. Washington.
WILSON, NATHANIEL . .	. Washington.

FLORIDA.

COOPER, JOHN C. . . .	. Jacksonville.
RANDALL, E. M. . . .	. Jacksonville.

GEORGIA.

ADAMS, SAMUEL B. . . .	. Savannah.
ANDERSON, CLIFFORD . .	. Macon.
BACON, AUGUSTUS O. . .	. Macon.
BARROW, POPE . . . .	. Athens.
BLACK, J. C. C. . . . .	. Augusta.
CHARLTON, WALTER G. . .	. Savannah.
CHISHOLM, WALTER S. . .	. Savannah.
CLARKE, MARSHALL J. . .	. Atlanta.
CUMMING, JOSEPH B. . . .	. Augusta.
CUNNINGHAM, HENRY C. . .	. Savannah.
DU BIGNON, FLEMING G. . .	. Savannah.
FALLIGANT, ROBERT . . .	. Savannah.
GARRARD, WILLIAM . . . .	. Savannah.
GLENN, JOHN F. . . . .	. Atlanta.
HAMMOND, N. J. . . . .	. Atlanta.
HILL, WALTER B. . . . .	. Macon.
JACKSON, HENRY . . . .	. Atlanta.
JONES, CHARLES C., JR. . .	. Augusta.
LAWTON, ALEXANDER R. . .	. Savannah.
LAWTON, ALEXANDER R., JR.	. Savannah.
LYON, R. F. . . . .	. Macon.
MACKALL, WILLIAM W., JR.	. Savannah.
MELDRIM, P. W. . . . .	. Savannah.
MERCER, GEORGE A. . . .	. Savannah.
MILLER, FRANK H. . . .	. Augusta.
MILLER, WM. K. . . . .	. Augusta.
MONTGOMERY, WILLIAM W. .	. Augusta.
NEWMAN, EMILE . . . .	. Savannah.
OWENS, GEORGE W. . . .	. Savannah.
REESE, WILLIAM M. . . .	. Washington.
TOMPKINS, HENRY B. . . .	. Atlanta.
WHITTLE, L. N. . . . .	. Macon.

ILLINOIS.

AYER, B. F.	.	.	.	Chicago.
BONNEY, C. C.	.	.	.	Chicago.
CULLOM, SHELBY M.	.	.	.	Springfield.
DENT, THOMAS	.	.	.	Chicago.
DUNHAM, CHARLES	.	.	.	Geneseo.
EDSALL, JAMES K.	.	.	.	Chicago.
FLOWER, JAMES M.	.	.	.	Chicago.
KOERNER, GUSTAVE	.	.	.	Belleville.
MASON, EDWARD G.	.	.	.	Chicago.
MURPHY, THEODORE D.	.	.	.	Woodstock.
PALMER, JOHN M.	.	.	.	Springfield.
SHERMAN, E. B.	.	.	.	Chicago.
TRUMBULL, LYMAN	.	.	.	Chicago.
TUTHILL, RICHARD S.	.	.	.	Chicago.

INDIANA.

ALDRICH, CHARLES H.	.	.	.	Fort Wayne.
BAKER, JOHN H.	.	.	.	Goshen.
BUTLER, JOHN M.	.	.	.	Indianapolis.
DAVIDSON, THOMAS F.	.	.	.	Crawfordville.
FAIRBANKS, CHARLES W.	.	.	.	Indianapolis.
FISHBACK, W. P.	.	.	.	Indianapolis.
GRESHAM, WALTER Q.	.	.	.	Indianapolis.
HARRISON, BENJAMIN	.	.	.	Indianapolis.
HENDRICKS, ABRAM W.	.	.	.	Indianapolis.
HORD, OSCAR B.	.	.	.	Indianapolis.
NEBEKER, LUCAS	.	.	.	Covington.
TAYLOR, R. S.	.	.	.	Fort Wayne.
WILSON, JOHN R.	.	.	.	Indianapolis.
WILSON, WILLIAM C.	.	.	.	Lafayette.

IOWA.

ANDERSON, JOSEPH G.	.	.	.	Keokuk.
BECK, JOSEPH M.	.	.	.	Fort Madison.
BOAL, GEORGE J.	.	.	.	Iowa City.
CUMMINS, A. B.	.	.	.	Des Moines.
DANIELS, FRANCIS B.	.	.	.	Dubuque.
DUNCOMBE, JOHN F.	.	.	.	Fort Dodge.
KAUFFMAN, B. F.	.	.	.	Des Moines.
RUNNELS, JOHN S.	.	.	.	Des Moines.
SHIRAS, OLIVER P.	.	.	.	Dubuque.
STILES, EDWARD H.	.	.	.	Ottumwa.
WRIGHT, GEORGE G.	.	.	.	Des Moines.
WRIGHT, THOMAS S.	.	.	.	Des Moines.

KANSAS.

PECK, GEORGE R.	.	.	.	Topeka.
STILLWELL, L.	.	.	.	Erie.

KENTUCKY.

BRECKINRIDGE, WM. C. P.	.	.	.	Lexington.
BROWN, JOHN MASON	.	.	.	Louisville.
BRYAN, JAMES W.	.	.	.	Covington.
BUCKNER, B. F.	.	.	.	Lexington.
DAVIE, GEORGE M.	.	.	.	Louisville.
EVANS, WALTER	.	.	.	Louisville.
GOEBEL, WILLIAM	.	.	.	Covington.
MOORE, J. Z.	.	.	.	Owensboro.
PIRTLE, JAMES S.	.	.	.	Louisville.
PRESTON, WILLIAM	.	.	.	Lexington.
SCOTT, C. SUYDAM	.	.	.	Lexington.
THORNTON, R. A.	.	.	.	Lexington.
TRABCE, E. F.	.	.	.	Louisville.
WILLSON, A. E.	.	.	.	Louisville.

LOUISIANA.

BAYNE, THOMAS L.	.	.	.	New Orleans.
BENEDICT, W. S.	.	.	.	New Orleans.
BLANC, SAMUEL P.	.	.	.	New Orleans.
BREAUX, G. A.	.	.	.	New Orleans.
BRICE, A. G.	.	.	.	New Orleans.
DENÈGRE, GEORGE	.	.	.	New Orleans.
FARRAR, EDGAR H.	.	.	.	New Orleans.
GILMORE, THOMAS	.	.	.	New Orleans.
GOLDTHWAITE, ALFRED	.	.	.	New Orleans.
HOWE, W. W.	.	.	.	New Orleans.
HUNT, CARLETON	.	.	.	New Orleans.
KELLY, HENRY B.	.	.	.	New Orleans.
KENNARD, JOHN H.	.	.	.	New Orleans.
KRUTTSCHNITT, ERNEST B.	.	.	.	New Orleans.
LAZARUS, H. L.	.	.	.	New Orleans.
LEGENDRE, JAMES	.	.	.	New Orleans.
MCCALEB, E. HOWARD	.	.	.	New Orleans.
MERRICK, EDWIN T.	.	.	.	New Orleans.
MILLER, H. C.	.	.	.	New Orleans.
PARDEE, DON A.	.	.	.	New Orleans.
POCHÉ, F. P.	.	.	.	New Orleans.
SEMMES, THOMAS J.	.	.	.	New Orleans.

MAINE.

BAKER, ORVILLE D.	.	.	.	Augusta.
BIRD, GEORGE E.	.	.	.	Portland.
CLEAVES, NATHAN	.	.	.	Portland.
GOULD, A. P.	.	.	.	Thomaston.
HASKELL, THOMAS H.	.	.	.	Portland.
HOLMES, GEORGE F.	.	.	.	Portland.
LIBBY, CHARLES F.	.	.	.	Portland.
STETSON, CHARLES P.	.	.	.	Bangor.
STROUT, A. A.	.	.	.	Portland.
WEBB, NATHAN	.	.	.	Portland.
WILSON, F. A.	.	.	.	Bangor.
WOODARD, CHARLES F.	.	.	.	Bangor.
WOODMAN, EDWARD.	.	.	.	Portland.

MARYLAND.

ALBERT, TALBOT J.	.	.	.	Baltimore.
ALEXANDER, JULIAN J.	.	.	.	Baltimore.
BEASTEN, CHARLES, JR.	.	.	.	Baltimore.
BONAPARTE, CHARLES J.	.	.	.	Baltimore.
BROWN, SEBASTIAN	.	.	.	Baltimore.
COWEN, JOHN K.	.	.	.	Baltimore.
CROSS, E. J. D.	.	.	.	Baltimore.
FINDLAY, JOHN V. L.	.	.	.	Baltimore.
FISHER, WILLIAM A.	.	.	.	Baltimore.
GOODWIN, C. RIDGELY	.	.	.	Baltimore.
GWINN, CHARLES J. M.	.	.	.	Baltimore.
HANDY, JOHN H.	.	.	.	Baltimore.
HINKLEY, EDWARD OTIS	.	.	.	Baltimore.
HUGHES, THOMAS	.	.	.	Baltimore.
JONES, ISAAC D.	.	.	.	Baltimore.
KNOTT, A. LEO	.	.	.	Baltimore.
LATROBE, JOHN H. B.	.	.	.	Baltimore.
MARSHALL, CHARLES	.	.	.	Baltimore.
MASON, JOHN T. (JOHN T. MASON, R.)	.	.	.	Baltimore.
MCATEE, JOHN L.	.	.	.	Hagerstown.
MCINTOSH, DAVID G.	.	.	.	Towson town.
MUNNIKHUYSEN, HOWARD	.	.	.	Baltimore.
ROBERTS, JOSEPH K., JR.	.	.	.	Upper Marlboro.
ROGERS, ROBERT LYON	.	.	.	Baltimore.
SHARP, GEORGE M.	.	.	.	Baltimore.
STOCKETT, J. SCHAAF	.	.	.	Annapolis.
STOCKBRIDGE, HENRY	.	.	.	Baltimore.
VENABLE, RICHARD M.	.	.	.	Baltimore.
WILLIAMS, EDWARD CALVIN	.	.	.	Baltimore.
WILMER, SKIPWITH	.	.	.	Baltimore.

MASSACHUSETTS.

ALLEN, STILLMAN B.	.	.	.	Boston.
BALDWIN, G. W.	.	.	.	Boston.
BARTLETT, SIDNEY	.	.	.	Boston.
BELL, C. U.	.	.	.	Lawrence.
BENNETT, EDMUND H.	.	.	.	Taunton.
BRALEY, HENRY K.	.	.	.	Fall River.
BROOKS, FRANCIS A.	.	.	.	Boston.
BULLOCK, A. G.	.	.	.	Worcester.
CHANDLER, ALFRED D.	.	.	.	Boston.
CLIFFORD, CHARLES W.	.	.	.	New Bedford.
COLLINS, PATRICK A.	.	.	.	Boston.
CRAPO, WILLIAM W.	.	.	.	New Bedford.
CURLEY, THOMAS	.	.	.	Boston.
CURTIS, BENJAMIN ROBBINS	.	.	.	Boston.
DAVIS, JOHN	.	.	.	Lowell.
DICKINSON, M. F., JR.	.	.	.	Boston.
ENDICOTT, WILLIAM C.	.	.	.	Salem.
FISH, FREDERICK P.	.	.	.	Boston.
FOX, WILLIAM H.	.	.	.	Taunton.
FRENCH, WILLIAM B.	.	.	.	Boston.
GASTON, WILLIAM	.	.	.	Boston.
GOODWIN, FRANK	.	.	.	Boston.
HEMENWAY, ALFRED	.	.	.	Boston.
HOWE, ARCHIBALD M.	.	.	.	Boston.
HOWES, L. W.	.	.	.	Boston.
HURD, FRANCIS W.	.	.	.	Boston.
JOHNSON, BYRON B.	.	.	.	Waltham.
JONES, LEONARD A.	.	.	.	Boston.
LADD, NATH. W.	.	.	.	Boston.
MARSHALL, JOSHUA N.	.	.	.	Lowell.
MAXWELL, J. AUDLEY	.	.	.	Boston.
MONROE, WILLIAM A.	.	.	.	Boston.
MYERS, JAMES J.	.	.	.	Boston.
POWERS, CHARLES E.	.	.	.	Boston.
PUTNAM, HENRY W.	.	.	.	Boston.
RANNEY, A. A.	.	.	.	Boston.
RICHARDSON, DANIEL S.	.	.	.	Lowell.
RICHARDSON, GEORGE F.	.	.	.	Lowell.
RUSSELL, CHARLES T., JR.	.	.	.	Cambridge.
RUSSELL, WILLIAM G.	.	.	.	Boston.
SCAIFE, LAURISTON L.	.	.	.	Boston.
SEARLE, GEORGE W.	.	.	.	Boston.
SEARS, PHILIP H.	.	.	.	Boston.
SHATTUCK, GEORGE O.	.	.	.	Boston.

MASSACHUSETTS—Continued.

SMITH, CHAUNCEY	.	.	.	Boston.
SOUTHARD, CHARLES B.	.	.	.	Boston.
SPAULDING, JOHN	.	.	.	Boston.
STOREY, MOORFIELD	.	.	.	Boston.
STORROW, JAMES J.	.	.	.	Boston.
SWIFT, M. G. B.	.	.	.	Fall River.
TREADWELL, JOHN P.	.	.	.	Boston.
USHER, EDWARD PRESTON	.	.	.	Boston.
WARNER, JOSEPH B.	.	.	.	Boston.

MICHIGAN.

BAKER, HERBERT L.	.	.	.	Detroit.
BALL, DANIEL H.	.	.	.	Marquette.
BROWN, HENRY B.	.	.	.	Detroit.
CONELY, JOHN D.	.	.	.	Detroit.
COOLEY, THOMAS M.	.	.	.	Ann Arbor.
DICKINSON, DON M.	.	.	.	Detroit.
DUFFIELD, HENRY M.	.	.	.	Detroit.
GRIFFIN, LEVI T.	.	.	.	Detroit.
HENDERSON, HENRY P.	.	.	.	Mason.
HOSMER, GEORGE S.	.	.	.	Detroit.
KENT, CHARLES A.	.	.	.	Detroit.
KIRCHNER, OTTO	.	.	.	Detroit.
MEDDAUGH, ELIJAH W.	.	.	.	Detroit.
O'BRIEN, THOMAS J.	.	.	.	Grand Rapids.
PENDLETON, EDWARD W.	.	.	.	Detroit.
POND, ASHLEY	.	.	.	Detroit.
ROGERS, HENRY WADE	.	.	.	Ann Arbor.
THURBER, HENRY T.	.	.	.	Detroit.
WEADOCK, THOMAS A. E.	.	.	.	Bay City.
WELLS, WILLIAM P.	.	.	.	Detroit.

MINNESOTA.

BENTON, REUBEN C.	.	.	.	Minneapolis.
COLE, GORDON E.	.	.	.	St. Paul.
ENSIGN, JOSIAH D.	.	.	.	Duluth.
HAHN, WILLIAM J.	.	.	.	Minneapolis.
HOWE, JOHN D.	.	.	.	St. Paul.
LEVI, ALBERT L.	.	.	.	Minneapolis.
LOVELY, JOHN A.	.	.	.	Albert Lea.
SANBORN, JOHN B.	.	.	.	St. Paul.
SANBORN, WALTER H.	.	.	.	St. Paul.

MINNESOTA—Continued.

STEVENS, HIRAM F.	.	.	St. Paul.
WILLISTON, W. C.	.	.	Redwing.
WILSON, THOMAS	.	.	Winona.
YOUNG, GEORGE B.	.	.	St. Paul.

MISSISSIPPI.

GILLAND, JOHN D.	.	.	Vicksburg.
HOUSTON, LOCK E.	.	.	Aberdeen.
HOWRY, CHARLES B.	.	.	Oxford.
LEIGH, JOSEPH E.	.	.	Columbus.
ORR, J. A.	.	.	Columbus.
REYNOLDS, R. O.	.	.	Aberdeen.
SIMS, W. H.	.	.	Columbus.

MISSOURI.

ADAMS, E. B.	.	.	St. Louis.
BARCLAY, SHEPPARD	.	.	St. Louis.
BRECKINRIDGE, SAMUEL M.	.	.	St. Louis.
BROADHEAD, JAMES O.	.	.	St. Louis.
DOBSON, CHARLES L.	.	.	Kansas City.
DONALDSON, WILLIAM R.	.	.	St. Louis.
GALT, SMITH P.	.	.	St. Louis.
HAMMOND, WILLIAM G.	.	.	St. Louis.
HENDERSON, J. B.	.	.	St. Louis.
HITCHCOCK, HENRY	.	.	St. Louis.
HOUGH, WARWICK	.	.	St. Louis.
JUDSON, FREDERICK N.	.	.	St. Louis.
KEHR, EDWARD C.	.	.	St. Louis.
LATHROP, GARDINER	.	.	Kansas City.
LEWIS, J. W.	.	.	St. Louis.
MADILL, GEORGE A.	.	.	St. Louis.
MUNFORD, JAMES E.	.	.	St. Louis.
NOBLE, JOHN W.	.	.	St. Louis.
PRATT, WALLACE	.	.	Kansas City.
TAUSSIG, JAMES	.	.	St. Louis.
THOMPSON, SEYMOUR D.	.	.	St. Louis.
TORREY, JAY L.	.	.	St. Louis.
TURNER, EDWARD W.	.	.	Plattsburg.
WITHROW, JAMES E.	.	.	St. Louis.

MONTANA TERRITORY.

BLAKE, HENRY N.	.	.	Virginia City.
DE WOLFE, STEPHEN	.	.	Butte City.
SANDERS, WILBUR F.	.	.	Helena.

NEBRASKA.

MANDERSON, CHARLES F.	.	.	Omaha.
WOOLWORTH, J. M.	.	.	Omaha.

NEW HAMPSHIRE.

ATHERTON, HENRY B.	.	.	Nashua.
BARTLETT, CHARLES H.	.	.	Manchester.
BINGHAM, HARRY	.	.	Littleton.
BURNHAM, HENRY E.	.	.	Manchester.
BURNS, CHARLES H.	.	.	Wilton.
CROSS, DAVID	.	.	Manchester.
CURRIER, FRANK D.	.	.	E. Canaan.
FELLOWS, JOSEPH W.	.	.	Manchester.
LADD, WILLIAM S.	.	.	Lancaster.
MARSTON, GILMAN	.	.	Exeter.
PIKE, AUSTIN F.	.	.	Franklin.
RAMSDELL, GEORGE A.	.	.	Nashua.
SHIRLEY, JOHN M.	.	.	Andover.
SPRING, JOHN L.	.	.	Lebanon.
WAIT, ALBERT S.	.	.	Newport.

NEW JERSEY.

ALLEN, ROBERT, JR.	.	.	Red Bank.
BERGEN, FRANK	.	.	Elizabeth.
BORCHERLING, CHARLES	.	.	Newark.
BUCHANAN, JAMES	.	.	Trenton.
DICKINSON, S. MEREDITH	.	.	Trenton.
FLEMMING, JAMES	.	.	Jersey City.
FORT, J. FRANK	.	.	Newark.
GARRETSON, A. Q.	.	.	Jersey City.
GOBLE, L. SPENCER	.	.	Newark.
GRAY, SAMUEL H.	.	.	Camden.
KEASBEY, ANTHONY Q.	.	.	Newark.
MCCARTER, THOMAS N.	.	.	Newark.
PARKER, CORTLANDT	.	.	Newark.
PARKER, R. WAYNE	.	.	Newark.
RANDOLPH, JOSEPH F.	.	.	Jersey City.
RICHEY, AUGUSTUS G.	.	.	Trenton.
SCHENCK, ABRAM V.	.	.	New Brunswick.
SHIPMAN, J. G.	.	.	Belvidere.
TAYLOR, JOHN W.	.	.	Newark.
TEESE, FREDERICK H.	.	.	Newark.
VAN BUREN, THOMAS B.	.	.	Englewood.
VREDENBURGH, JAMES B.	.	.	Jersey City.

NEW JERSEY—Continued.

VROOM, GARRETT D. W.	Trenton.
WEART, JACOB	Jersey City.
WEEKS, WILLIAM R.	Newark.
WILLIAMS, WASHINGTON B.	Jersey City.
WILSON, WILLIAM R.	Elizabeth.
WOODRUFF, ROBERT S.	Trenton.

NEW YORK.

ABBOTT AUSTIN	New York.
AVERY, FRANK C.	Ovid.
BAKER, ASHLEY D. L.	Gloversville.
BEACH, CHARLES F., JR.	New York.
BELLINGER, LEWIS H.	New York.
BENEDICT, ROBERT D.	New York.
BENTON, DANIEL L.	Hornellsville.
BISCHOFF, HENRY, JR.	New York.
BRISTOW, BENJAMIN H.	New York.
BRUNO, RICHARD M.	New York.
BRUSH, CHARLES H.	New York.
BULLARD, E. F.	Saratoga Springs.
BURNETT, HENRY L.	New York.
BUTLER, CHARLES	New York.
BUTLER, CHARLES HENRY	New York.
BUTLER, WM. ALLEN	New York.
BUTLER, WM. ALLEN, JR.	New York.
CARTER, JAMES C.	New York.
CARY, MELBERT B.	New York.
CHAMBERLAIN, D. H.	New York.
CHITTENDEN, L. E.	New York.
CLARK, JAMES OLIVER	New York.
CLARK, THOMAS ALLEN	Albany.
COLLIER, M. DWIGHT	New York.
COOK, WILLIAM W.	New York.
COX, S. S.	New York.
CROWELL, CHARLES E.	New York.
DAVISON, CHARLES A.	New York.
DA COSTA, CHARLES M.	New York.
DESTY, ROBERT	Rochester.
DICKSON, HERBERT E.	New York.
DILLON, JOHN F.	New York.
DORSHEIMER, WILLIAM	New York.
DUDLEY, JAMES M.	Johnstown.
EATON, SHERBURNE B.	New York.

NEW YORK—Continued.

EVARTS, WILLIAM M.	.	.	New York.
FIELD, DAVID DUDLEY	.	.	New York.
FRANKENHEIMER, JOHN	.	.	New York.
FOX, AUSTEN G.	.	.	New York.
GARDINER, CHARLES A.	.	.	New York.
GLOVER, JOHN H.	.	.	New York.
GRINNELL, W. MORTON	.	.	New York.
GUILBERT, ALBERT B.	.	.	Rochester.
HALE, MATTHEW	.	.	Albany.
HAWKESWORTH, R. W.	.	.	New York.
HEGAMAN, W. A. O.	.	.	New York.
HERMAN, HENRY M.	.	.	New York.
HOLT, GEORGE C.	.	.	New York.
HORNBLOWER, WILLIAM B.	.	.	New York.
HUBBARD, THOMAS H.	.	.	New York.
HUTCHINS, WALDO	.	.	New York.
ISAACS, M. S.	.	.	New York.
JEWETT, HUGH J.	.	.	New York.
KERNAN, FRANCIS	.	.	Utica.
LAMBERTON, C. L.	.	.	New York.
LEEDS, CHARLES C.	.	.	New York.
LEWIS, CHARLTON T.	.	.	New York.
MACFARLAND, W. W.	.	.	New York.
MATHEWS, ALBERT	.	.	New York.
MILBURN, JOHN G.	.	.	Buffalo.
MOAK, N. C.	.	.	Albany.
MOOT, ADELBERT	.	.	Buffalo.
MYERS, NATHANIEL	.	.	New York.
NASH, STEPHEN P.	.	.	New York.
NELSON, HOMER A.	.	.	Poughkeepsie.
NICHOLS, GEORGE L., JR.	.	.	New York.
OLMSTEAD, AARON B.	.	.	Saratoga Springs.
OLMSTEAD, DWIGHT H.	.	.	New York.
PARKER, ALTON B.	.	.	Kingston.
PARKER, AMASA J.	.	.	Albany.
PARKER, JAMES	.	.	New York.
PATTERSON, T. ELLIOTT	.	.	Ilion.
PEABODY, CHARLES A.	.	.	New York.
PHELPS, WM. WALTER	.	.	New York.
POTTER, ORLANDO B.	.	.	New York.
PRIME, RALPH E.	.	.	Yonkers.
PRYOR, ROGER A.	.	.	Brooklyn.
ROGERS, SHEERMAN S.	.	.	Buffalo.
RUSSELL, W. H. H.	.	.	New York.

NEW YORK—Continued.

SANFORD, ORLIN M.	.	.	.	New York.
SCHOONMAKER, AUGUSTUS, JR.	.	.	.	Kingston.
SCOTT, JAMES L.	.	.	.	Ballston Springs.
SEMPLE, MACKENSIE	.	.	.	New York.
SEWELL, ROBERT	.	.	.	New York.
SHACK, FERDINAND	.	.	.	New York.
SHEPARD, ELLIOT F.	.	.	.	New York.
SMITH, NELSON	.	.	.	New York.
SPEIR, GILBERT M., JR.	.	.	.	New York.
SPRAGUE, E. C.	.	.	.	Buffalo.
STERNE, SIMON	.	.	.	New York.
STICKNEY, ALBERT	.	.	.	New York.
STILLMAN, THOMAS E.	.	.	.	New York.
STRONG, ALONZO PAIGE	.	.	.	Schenectady.
SULLIVAN, ALGERNON S.	.	.	.	New York.
SWAYNE, WAGER	.	.	.	New York.
TAYLOR, JOHN D.	.	.	.	New York.
TERRILL, H. L.	.	.	.	New York.
TODD, A. J.	.	.	.	New York.
TOMPKINS, HAMILTON B.	.	.	.	New York.
TURNER, HERBERT B.	.	.	.	New York.
VANDERPOEL, A. J.	.	.	.	New York.
VAN SLYCK, GEORGE W.	.	.	.	New York.
WARD, JOHN E.	.	.	.	New York.
WARREN, IRA D.	.	.	.	New York.
WHEELER, EVERETT P.	.	.	.	New York.
WHEELER, WILLIAM	.	.	.	New York.
WHITTAKER, EGBERT	.	.	.	Saugerties.
WILCOX, ANSLEY	.	.	.	Buffalo.
WILLIS, BENJAMIN A.	.	.	.	New York.
WILMER, W. N.	.	.	.	New York.
WINTHROP, WILLIAM	.	.	.	West Point.

NORTH CAROLINA.

BRIDGERS, JOHN L., JR.	.	.	.	Tarboro.
KEOGH, THOMAS B.	.	.	.	Greensboro.

OHIO.

BALDWIN, CHARLES C.	.	.	.	Cleveland.
BURKE, STEVENSON.	.	.	.	Cleveland.
COLSTON, EDWARD	.	.	.	Cincinnati.
CRAIGHEAD, S.	.	.	.	Dayton.
DAUGHERTY, M. A.	.	.	.	Columbus.
DAVIDSON, WILLIAM A.	.	.	.	Cincinnati.

OHIO—Continued.

DICKSON, J. H.	Wellington.
FERGUSON, E. A.	Cincinnati.
FERRIS, AARON A.	Cincinnati.
FOLLETT, MARTIN D.	Marietta.
FORCE, MANNING F.	Cincinnati.
GILMER, T. J.	Warren.
GILSON, J. W.	Warren.
GRANGER, M. M.	Zanesville.
GREEN, EDWIN P.	Akron.
GRISWOLD, SENECA O.	Cleveland.
GROESBECK, WILLIAM S.	Cincinnati.
GUNCKEL, LEWIS B.	Dayton.
HALE, JOHN C.	Cleveland.
HALL, JOHN J.	Akron.
HARRISON, RICHARD A.	Columbus.
HAYNES, DANIEL A.	Dayton.
HOADLY, GEORGE	Cincinnati.
HODGE, NOAH	Akron.
HORTON, S. DANA	Pomeroy.
HOUE, GEORGE W.	Dayton.
HUNT, SAMUEL F.	Cincinnati.
JOHNSON, EDGAR M.	Cincinnati.
JOHNSTON, JOSEPH R.	Youngstown.
JONES, ASAHIEL W.	Youngstown.
KING, RUFUS	Cincinnati.
LOGAN, THOMAS A.	Cincinnati.
LOUDON, DEWITT C.	Georgetown.
MACKOY, WILLIAM H.	Cincinnati.
MATTHEWS, STANLEY	Cincinnati.
MCCLINTOCK, WILLIAM T.	Cincinnati.
MORRIS, S. W.	Ironton.
MUNGER, WARREN	Dayton.
MURRAY, R. B.	Youngstown.
OVIATT, EDWARD	Akron.
PAGE, HENRY F.	Circleville.
RAMSEY, WILLIAM M.	Cincinnati.
RANNEY, HENRY C.	Cleveland.
RANNEY, RUFUS P.	Cleveland.
SHAW, R. K.	Marietta.
SPEAR, WILLIAM T.	Warren.
STUART, M.	Ravenna.
THAYER, R. A.	Warren.
UPSON, WILLIAM H.	Akron.
WILLIAMSON, SAMUEL E.	Cleveland.
YOUNG, EDMOND S.	Dayton.

OREGON.

DEADY, M. P. Portland.

PENNSYLVANIA.

ALLEN, ROBERT P. Williamsport.
 ARNOLD, MICHAEL Philadelphia.
 ATHERTON, THOMAS H. Wilkesbarre.
 BAER, GEORGE F. Reading.
 BAUSMAN, J. W. B. Lancaster.
 BEDFORD, GEORGE R. Wilkesbarre.
 BIDDLE, GEORGE W., Philadelphia.
 BISPHAM, GEORGE TUCKER Philadelphia.
 BRECK, CHARLES DU PONT Scranton.
 BREDIN, JAMES Pittsburgh.
 BRUNDAGE, A. R. Wilkesbarre.
 BUDD, HENRY Philadelphia.
 CRAWFORD, GEORGE L. Philadelphia.
 CUMMIN, H. H. Williamsport.
 DARLING, EDWARD P. Wilkesbarre.
 DARLING, J. VAUGHAN. Wilkesbarre.
 DERR, ANDREW F. Wilkesbarre.
 FOX, EDWARD J. Easton.
 GILBERT, LYMAN D. Harrisburg.
 GUTHRIE, GEORGE W. Pittsburgh.
 HANDLEY, JOHN Scranton.
 HEMPHILL, JOSEPH West Chester.
 HEVERIN, JAMES H. Philadelphia.
 HINCKLEY, ROBERT H. Philadelphia.
 HUEY, SAMUEL B. Philadelphia.
 KAERCHER, GEORGE R. Philadelphia.
 KAUFFMAN, A. J. Columbia.
 KULF, GEORGE B.. . . . Wilkesbarre.
 LISTER, CHARLES C. Philadelphia.
 LITTLE, WILLIAM E. Tunkhannock.
 LIVINGSTON, J. B. Lancaster.
 MACVEAGH, WAYNE Philadelphia.
 MCCLINTOCK, ANDREW H. Wilkesbarre.
 MCCLINTOCK, ANDREW T. Wilkesbarre.
 MERCER, GEORGE G. Philadelphia.
 MILLER, N. DU BOIS. Philadelphia.
 MITCHELL, JAMES T. Philadelphia.
 MONAGHAN, ROBERT E. West Chester.
 MORRIS, EFFINGHAM B. Philadelphia.
 MUNSON, C. LA RUE Williamsport.
 NORTH, E. D. Lancaster.

PENNSYLVANIA—Continued.

NORTH, HUGH M.	Columbia.
OSBORNE, EDWIN S.	Wilkesbarre.
OUTERBRIDGE, ALBERT A.	Philadelphia.
PACKER, JOHN B.	Sunbury.
PALMER, HENRY W.	Wilkesbarre.
PARRISH, JOSEPH	Philadelphia.
PARSONS, HENRY C.	Williamsport.
PATTERSON, C. STUART	Philadelphia.
PENNYPACKER, CHARLES H.	West Chester.
PENNYPACKER, SAMUEL W.	Philadelphia.
PERKINS, SAMUEL C.	Philadelphia.
PETTIT, SILAS W.	Philadelphia.
PRICE, J. SERGEANT	Philadelphia.
PRICHARD, FRANK P.	Philadelphia.
RAWLE, FRANCIS	Philadelphia.
RAWLE, WM. HENRY	Philadelphia.
REED, HENRY	Philadelphia.
REYNOLDS, SAMUEL H.	Lancaster.
ROBB, SAMUEL	Philadelphia.
ROGERS, GEORGE W.	Norristown.
SANDERS, DALLAS	Philadelphia.
SEIBERT, W. N.	New Bloomfield.
SHARP, ISAAC S.	Philadelphia.
SHIRAS, GEORGE, JR.	Pittsburgh.
SHOEMAKER, L. D.	Wilkesbarre.
SMITH, WALTER GEORGE	Philadelphia.
STEWART, JOHN	Chambersburg.
STEWART, W. F. BAY	York.
STURGES, E. B.	Scranton.
SWAIN, CHARLES M.	Philadelphia.
TOWNSEND, WASHINGTON,	West Chester.
VAUX, RICHARD	Philadelphia.
WADDELL, WILLIAM B.	West Chester.
WAGNER, SAMUEL	Philadelphia.
WATSON, D. T.	Pittsburgh.
WETHERILL, WILLIAM D.	Philadelphia.
WILLARD, EDWARD N.	Scranton.
WILTBANK, WILLIAM W.	Philadelphia.
WOLVERTON, SIMON P.	Sunbury.
ZEIGLER, CHARLES F.	Philadelphia.

RHODE ISLAND.

BAKER, DARIUS	Newport.
BRADLEY, CHARLES	Providence.

RHODE ISLAND—Continued.

BRADLEY, CHARLES S.	.	.	Providence.
GORMAN, CHARLES E.	.	.	Providence.
GREGORY, JOHN P.	.	.	Pawtucket.
LAWRENCE, ISAAC	.	.	Newport.
PECKHAM, FRANCIS B.	.	.	Newport.
RIPLEY, JAMES M.	.	.	Providence.
ROELKER, WILLIAM G.	.	.	Providence.
THURSTON, BENJAMIN F.	.	.	Providence.
THURSTON, JOHN D.	.	.	Providence.
TILLINGHAST, JAMES	.	.	Providence.
VAN SLYCK, NICHOLAS	.	.	Providence.

SOUTH CAROLINA.

BACOT, T. W.	.	.	Charleston.
BARKER, THEODORE G.	.	.	Charleston.
BENET, WILLIAM C.	.	.	Abbeville.
BOYD, ROBERT W.	.	.	Darlington.
BRAWLEY, WILLIAM H.	.	.	Charleston.
DARGAN, E. KEITH	.	.	Darlington C. H.
GILLAND, THOMAS M.	.	.	Kingstree.
HEMPHILL, JOHN J.	.	.	Chester.
JOHNSTONE, GEORGE	.	.	Newbury.
MAGRATH, A. G.	.	.	Charleston.
MCCRADY, EDWARD, JR.	.	.	Charleston.
MORDECAI, T. MOULTRIE	.	.	Charleston.
NETTLES, CLEMENT S.	.	.	Darlington.
RION, JAMES H.	.	.	Winnsboro.
SIMONTON, C. H.	.	.	Charleston.
SMYTHE, AUGUSTINE T.	.	.	Charleston.
WOODS, CHARLES A.	.	.	Marion.
YOUNG, HENRY E.	.	.	Charleston.

TENNESSEE.

ALLISON, ANDREW	.	.	Nashville.
BATE, H. R.	.	.	Covington.
BROWN, JOHN C.	.	.	Pulaski.
CARROLL, WILLIAM H.	.	.	Memphis.
COOPER, EDMUND	.	.	Shelbyville.
COOPER, WILLIAM F.	.	.	Nashville.
DICKINSON, J. M.	.	.	Nashville.
ELLETT, HENRY T.	.	.	Memphis.
ESTES, BEDFORD M.	.	.	Memphis.
FENTRESS, JAMES	.	.	Bolivar.

TENNESSEE—Continued.

GAUT, JOHN M.	.	.	.	Nashville.
McFARLAND, L. B.	.	.	.	Memphis.
McNEAL, ALBERT T.	.	.	.	Bolivar.
MOORMAN, H. C.	.	.	.	Somerville.
PIERCE, JAMES O.	.	.	.	Memphis.

TEXAS.

BALLINGER, W. P.	.	.	.	Galveston.
GRESHAM, WALTER	.	.	.	Galveston.
McLEARY, J. H.	.	.	.	San Antonio.
STOCKDALE, F. S.	.	.	.	Cuero.
WAELDER, JACOB	.	.	.	San Antonio.
WAUL, T. N.	.	.	.	Galveston.

VERMONT.

JOHNSON, WILLIAM E.	.	.	.	Woodstock.
McCULLOUGH, JOHN G.	.	.	.	N. Bennington.
NOBLE, GUY C.	.	.	.	St. Albans.
PAUL, NORMAN	.	.	.	Woodstock.
PHELPS, EDWARD J.	.	.	.	Burlington.
POLAND, LUKE P.	.	.	.	St. Johnsbury.
PORTER, CHARLES W.	.	.	.	Montpelier.
PROUT, JOHN	.	.	.	Rutland.
ROBERTS, DANIEL	.	.	.	Burlington.
SHURTLIFF, S. C.	.	.	.	Montpelier.
SMALLEY, B. B.	.	.	.	Burlington.
TUPPER, A. P.	.	.	.	Middlebury.
WALKER, W. H.	.	.	.	Ludlow.
WING, JOSEPH A.	.	.	.	Montpelier.

VIRGINIA.

BEACH, S. F.	.	.	.	Alexandria.
GARNETT, THEODORE S.	.	.	.	Norfolk.
GILLIAM, MARSHALL M.	.	.	.	Richmond.
HAMILTON, ALEXANDER	.	.	.	Petersburg.
LYONS, JAMES	.	.	.	Richmond.
PAGE, LEGH R.	.	.	.	Richmond.
ROBERTSON, WILLIAM J.	.	.	.	Charlottesville.
TUCKER, J. RANDOLPH	.	.	.	Lexington.
WISE, JOHN S.	.	.	.	Richmond.

WEST VIRGINIA.

BOGGER, CALEB	.	.	.	Clarksburg.
COLE, W. L.	.	.	.	Parkersburg.
DAVIS, JOHN J.	.	.	.	Clarksburg.
HEREFORD, FRANK	.	.	.	Union.
HIGGINBOTHAM, C. C.	.	.	.	Buckhannon.
HUTCHINSON, JOHN A.	.	.	.	Parkersburg.
KNIGHT, EDWARD B.	.	.	.	Charleston.
SOMMERVILLE, J. B.	.	.	.	Wellsburg.

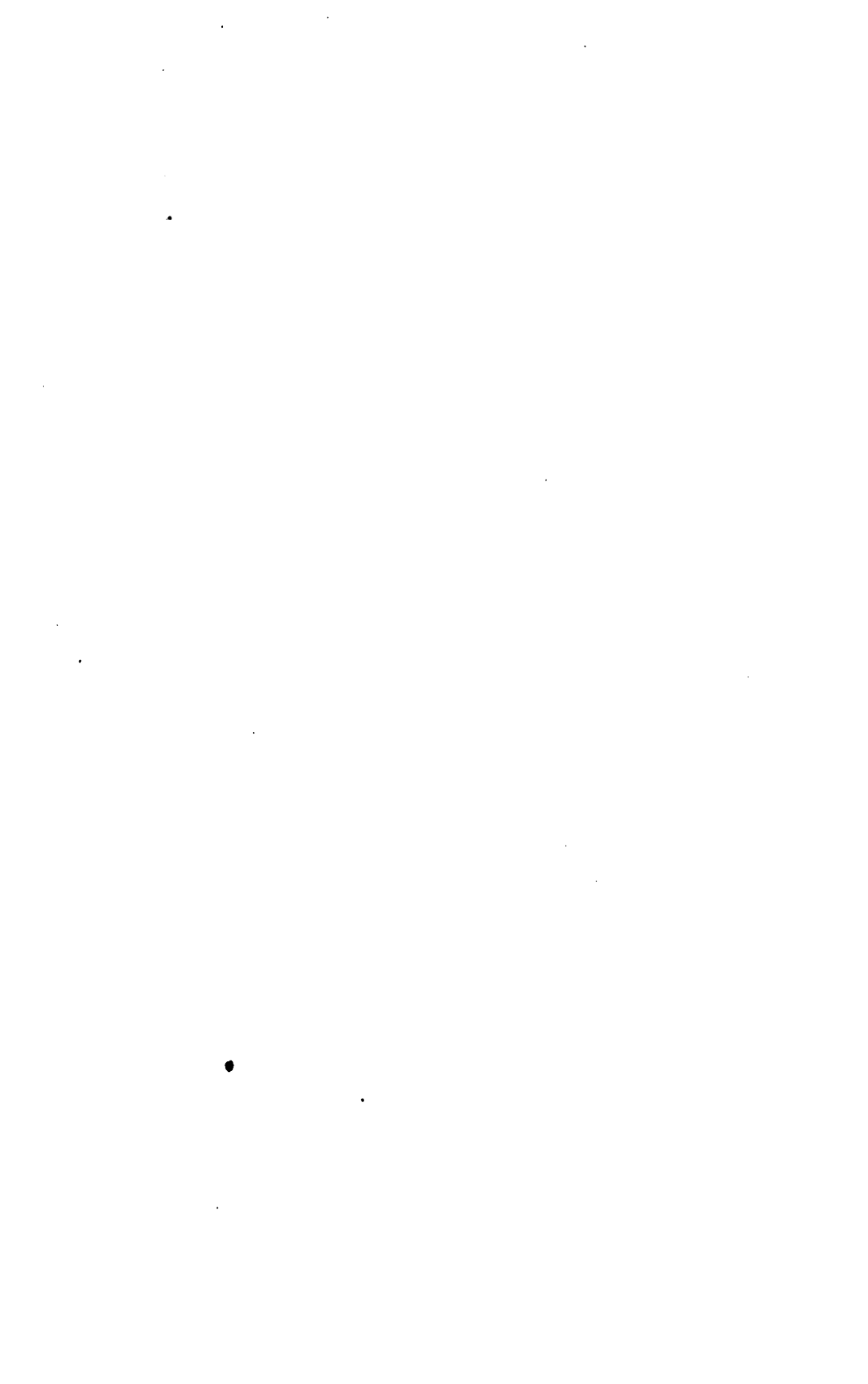
WISCONSIN.

CARY, ALFRED L.	.	.	.	Milwaukee.
CARY, JOHN W.	.	.	.	Milwaukee.
GREGORY, J. C.	.	.	.	Madison.
HERDEGEN, ADOLPH	.	.	.	Milwaukee.
HINER, J. W.	.	.	.	Fond du Lac.
HOOKE, DAVID G.	.	.	.	Milwaukee.
HUDD, THOMAS R.	.	.	.	Green Bay.
JACKSON, A. A.	.	.	.	Janesville.
JENKINS, JAMES G.	.	.	.	Milwaukee.
MILLER, B. K.	.	.	.	Milwaukee.
PINNEY, SILAS U.	.	.	.	Madison.
SCHLEY, BRADLEY G.	.	.	.	Milwaukee.
TENNEY, DANIEL K.	.	.	.	Madison.
VAN WINKLE, W. W.	.	.	.	Parkersburg.
VILAS, WILLIAM F.	.	.	.	Madison.
WEGG, DAVID S.	.	.	.	Milwaukee.
WINKLER, FREDERICK C.	.	.	.	Milwaukee.

RECAPITULATION.

States.	No. of Members.	States.	No. of Members.
ALABAMA	8	MISSOURI	24
ARKANSAS	7	MONTANA	3
CALIFORNIA	2	NEBRASKA	2
CONNECTICUT	19	NEW HAMPSHIRE	15
DELAWARE	9	NEW JERSEY	28
DISTRICT OF COLUMBIA	29	NEW YORK	111
FLORIDA	2	NORTH CAROLINA	2
GEORGIA	32	OHIO	51
ILLINOIS	14	OREGON	1
INDIANA	14	PENNSYLVANIA	81
IOWA	12	RHODE ISLAND	13
KANSAS	2	SOUTH CAROLINA	18
KENTUCKY	14	TENNESSEE	15
LOUISIANA	22	TEXAS	6
MAINE	13	VERMONT	14
MARYLAND	30	VIRGINIA	9
MASSACHUSETTS	53	WEST VIRGINIA	8
MICHIGAN	20	WISCONSIN	17
MINNESOTA	13		
MISSISSIPPI	7	TOTAL	740

APPENDIX.



ADDRESS
OF
WILLIAM ALLEN BUTLER,
OF NEW YORK,
PRESIDENT OF THE ASSOCIATION.

ON the recurrence of our annual meeting it is a source of special satisfaction to me to welcome to the state of New York, and to the most attractive of its summer resorts, so many members of the American Bar. Your presence attests the fact that one purpose of our organization is already fulfilled in the closer union of the members of our profession in the several states in that friendly personal intercourse which cannot fail to give inspiration and strength to our efforts for the improvement of the law. We are happily exempt from some of the disturbing elements which so largely inhere in other learned professions. We have no conflicting and contending schools, or sects, or parties, and the errand which brings us here is one which combines with a true spirit of fraternity an unselfish purpose to advance the welfare of our common country by strengthening the foundations of justice and purifying the methods of its administration.

The eighth article of our Constitution provides that the President shall open "each annual meeting with an address in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year."

The same article makes it the duty of the member of the General Council from each state to report to the President, annually, on or before May 1, any such legislation in his state.

By the kind attention of members of the General Council and of the Secretary of the Association, which I gratefully acknowledge, the task of examining the statutes enacted since our last meeting has been materially lightened, and by direct correspondence with the secretaries of state of the several states I have become possessed of some additional facts pertinent to the subject to which the mandate of the Constitution now directs our attention.

At the threshold of this investigation we must pause a moment, arrested by the thought that one of the most honored and esteemed members of our body, John W. Stevenson, of Kentucky, who, as its president a year ago, in this place and in the presence of many now gathered in this assembly, performed this same duty with characteristic fidelity and care, has been suddenly taken from us by death within the past week, and on the eve of our annual gathering. After a long life, filled with useful labors in the sphere of his profession and in the service of his state and of his country, he has ceased from his labors, leaving to his kindred and to the community in which he lived an honored name, and to us a memory fragrant with the charm of his kindly, genial nature and of his enlightened sympathy with our best endeavors.

Since our last annual meeting regular legislative sessions have been held in fourteen states, Connecticut, Georgia, Iowa, Kentucky, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Carolina and Virginia.

The session laws of the legislature of Michigan, of 1885, were not published in time to enable my predecessor in office to examine and report upon them at the last annual meeting. A special session of the legislature of Kansas was held in January, 1886. Adding these statutes to the list, there are, in all, sixteen states whose legislation, besides that of Congress, is to be reviewed.

The fact that the legislatures of less than one-half of the states have been convened this year is due to the very general adoption of the system of biennial sessions. Annual sessions are held now in only about one-third of the states.

This expedient, resorted to mainly as a measure of economy, and as the most available means of lessening the flagrant evils of pernicious and ill-regulated legislation, is at once a standing admission of the mischief of over-legislation and of inability to grapple with the mischief by any other means than that of restricting the opportunities of its exercise.

For a people claiming pre-eminence in the sphere of popular government, it seems hardly creditable that in their seeming despair of a cure for the chronic evils of legislation they should be able to mitigate them only by making them intermittent. Under the biennial system, the temporary relief enjoyed in what are called the "off years" seems thus far to have reconciled the body politic of the several states which have adopted it to the risk of an aggravation of the malady when the legislative year comes round and the old symptoms recur.

The secretaries of state with whom I have communicated concur in certifying that no public inconvenience is caused by the biennial system, and one of them, of the state of Nebraska, in answer to my query, if biennial sessions occasion any public inconvenience, caused thereby, writes: "None whatever. The public interests would be better subserved by having legislative sessions held only once in four years."

A careful scrutiny of the legislation going on annually, or biennially, in the several states brings into special prominence two striking facts: first, the great disproportion between the number of bills introduced into the legislatures and the number which become laws, showing how largely the sessions are occupied with attempts at unnecessary or impracticable legislation; and second, the equally great disproportion between laws which promote private and local interests and those which are of general public concern.

A few examples from statistics furnished me from official sources will suffice to illustrate these points.

At the last session of the legislature of Alabama the number of bills introduced was one thousand four hundred and sixty-nine; of bills passed, four hundred and forty-two. In Colorado, bills introduced, seven hundred; passed, one hundred and seventy-eight. In Illinois, bills introduced, one thousand one hundred and seven; passed, one hundred and thirty-one. In Iowa, bills introduced, one thousand one hundred and thirteen; passed, one hundred and eighty-one. In New Jersey, bills introduced, seven hundred and twelve; passed, two hundred and seventy-five. In Pennsylvania, bills introduced, one thousand and sixty-five; passed, two hundred and twenty-one. In Kentucky, bills introduced, two thousand three hundred and ninety; passed, one thousand four hundred. In Tennessee, bills introduced, one thousand one hundred and eighty-three; passed, one hundred and fifty-eight. In Nebraska, bills introduced, six hundred and thirty-one; passed, one hundred and twenty-six. In New York, bills introduced, two thousand and ninety-three, of which only six hundred and eighty-one became laws. Total of bills introduced in the above states, twelve thousand four hundred and forty-nine; of bills passed, three thousand seven hundred and ninety-three.

In Congress the total number of bills introduced in both houses during the session just closed was twelve thousand nine hundred and six, exclusive of two hundred and seventy-seven joint resolutions. Only eleven hundred and one bills, or less than ten *per cent.*, were passed. The number of bills introduced exceeded that of the first session of the next preceding Congress by two thousand nine hundred and forty-nine.

The disproportion between local or private and general statutes is greatest in those states which have not, by constitutional provisions, required corporations to be formed under general laws. Thus, in Virginia, the statutes creating or regulating corporations, or amending their charters, form a great part of the entire legislation of the last session. In

Mississippi, the member of the General Council, after reporting a few instances of important legislation, says: "The remainder of the volume of the session laws is devoted to local and special acts. Railroads and cities are incorporated, and schools, colleges and building associations. The local and special legislation," he continues, "is a vice, and can only be prevented by a constitutional inhibition."

Even where constitutional restraints exist, this vice of special and local legislation is still a crying evil. It is safe to say that, after excluding the bills making provision for the expense of carrying on the government, those which are intended to cure the mistakes of former legislatures, and those which promote private or corporate interests, the residuum of measures passed by any state, as well as by Congress, really public in their character, is very insignificant not to say ludicrous in the comparison.

The expense involved in reaching these results varies in different states. In South Carolina, where the session is limited, by a constitutional provision, to thirty days, the cost is reported by the secretary of state to be only \$52,000. In Pennsylvania, with one hundred and fifty-eight days of session, the amount of expenditure is returned as \$686,500. In Illinois, the last session of one hundred and seventy-one days cost \$361,000. In Connecticut, the last session of ninety days cost \$98,100, while a session of corresponding length in Colorado cost \$180,000, and the general expenses of the legislation of California are \$130,000 for a session of sixty days. The cost of printing, of traveling and other incidental expenses must be added in order to form any accurate estimate of the burden imposed on the taxpayers of the states to carry on this badly managed business of law making, which varies from a daily average cost of about \$1000 per diem for every legislative session to over \$4000 per diem, making an aggregate in the total number of states and in Congress which it is impossible to ascertain with exactness, but which cannot,

I think, be less than \$10,000,000—not as an exceptional outlay, but as the price paid for current legislation.

With a single exception nothing seems to have been attempted in any state to cure or check this universally admitted mischief. To the inquiry put by me to the secretaries of state, “Is there any provision for supervision or revision of bills except by committees of the legislature?” the invariable answer has been “No.”

I have not been referred to, nor have I been able to discover, any statute passed during the year looking to reform in legislative methods, save the one already referred to as exceptional, that of South Carolina, which I take pleasure in reporting, because its passage was largely promoted by one of our number, Mr. McCrady, the member of the General Council from that state.

The legislature of South Carolina at its last session confided to a joint committee of both its houses the consideration of the possible reduction and limitation of the number of subjects of legislation and of expediting the legislative business. The able report of this committee, prepared, as I learn, by Mr. McCrady, brought to the attention of the legislature the existence of the evil common to all the states. It appeared that the bulk of the legislation of South Carolina during the past four years has related to private or local interests, and but a fragment of it (two hundred and fifty-six measures out of an aggregate of nearly nine hundred) to matters of general public concern. Acts of incorporation, grants of inheritance, changes of names and releases from indebtedness had consumed a large proportion of the time of the legislature at a great public expense and to the serious detriment of the state. Many of these private acts are never availed of, and the report states that there are on the statute books of the state more than a hundred railroad charters under which no railroads have ever been built. The consequence of thus overloading the legislative dockets with private bills, or bills for corporate franchises, is to crowd into the concluding days of

each legislative session a volume of business which cannot be properly attended to, and the report declares, in terms which would apply to almost all, if not quite all of the states, that the legislature "cannot go on longer in the reckless scramble which has characterized the last days of our session."

A bill was passed, not as far-reaching as that reported by the committee, but containing serviceable provisions against hasty and ill-advised legislative action.

If the example thus set by South Carolina were followed by other states, a greatly needed reform would be set in motion.

A few intelligent, unselfish and fearless men of our profession in each state legislature could, by promoting judicious enactments which would commend themselves to all good citizens, very soon so reduce the volume of legislation as to relieve the statute books from a mass of unnecessary laws, and the people from the burdens they impose.

Coming now to the details of the legislation of the year, instead of taking up the list of the states in their order, I propose to group the most noteworthy statutes according to their subject matter, beginning with those which relate to the oversight and protection of children; passing next to laws affecting women and the domestic relations; then to those which provide for the public health, safety and morals; to the statutes relating to labor, trade and corporate organizations; thus reaching the legislation which concerns legal rights and procedure, and finally that which relates to general political regulation and the wider functions of government.

CARE AND PROTECTION OF CHILDREN.

The care, protection and training of children are noticeable features of the legislation of several of the states.

Connecticut has prohibited the employment of children under thirteen years of age in factories; has provided for discrimination in the disposition to be made by committing magistrates of

dependent or neglected children, so as not to subject innocent children to commitment to places of confinement for offenders against the law or for the vagrant and vicious classes; and by special statutes prohibits the playing of games in pool or billiard rooms by minors under sixteen years of age, or their loitering in or about such rooms.

Georgia authorizes the boards of education or other public school authorities to maintain as an annex a department of industrial education for teaching the use of tools for working in wood and metal; a serviceable supplement to the ordinary courses of instruction, as was well shown by the industrial exhibition held in the city of New York during the last spring, in which the results of the mechanical work of children in the public schools of the city and its vicinity called forth deserved popular interest and approbation.

Both Massachusetts and New Hampshire prohibit by fine—in the former state of fifty dollars and in the latter state of twenty dollars—the selling of cigarettes or of tobacco in any form to minors under sixteen years of age, and in Massachusetts the gift by any person, except the parents or guardian of such minor, of the prohibited articles, subjects the donor to the same penalty as in case of sale. New Hampshire, after thus guarding against mischief to the internal organs of her citizens of tender age, shows even more solicitude for their external well-being by prohibiting, under fine of twenty-five dollars, the putting up or maintaining on any land adjacent to school lots of any barbed wire fences, a humane provision which the youth of New Hampshire would probably be willing to have extended to all the orchards and melon-patches in the state. A further statute of New Hampshire prohibits, under penalty of fine and imprisonment, the hiring, using or permitting any minor to sell or give away books, magazines or newspapers devoted to the publication or illustration of stories of bloodshed, lust or crime, or principally made up of police or criminal news, a regulation which, if put in force in the city of New York, would soon relegate the newsboy to the

lost tribes. New Jersey, by heavy penalties, prohibits the apprenticing, employing, letting out or disposing of children under twelve years of age for singing, playing on musical instruments or any other like calling to be followed in the streets and highways.

Maryland has also enacted a "cigarette" statute, similar to that of Massachusetts.

Ohio has enacted a stringent law for the prevention of cruelty to children under sixteen years of age or their neglect or abuse by parents or guardians. Another statute of the same state, entitled "An act to provide against the adulteration of candy," and leveled with special severity against *terra alba* and other deleterious substances, while not, in terms, intended for the protection of children, may properly be classed among the most benign instances of preventive legislation in their behalf, while Maryland extends the prohibition as to adulteration to cakes as well as candy.

South Carolina and Maryland, by acts to suppress the publication and circulation of obscene books, papers and pictures, and the posting of indecent show-bills, provide special legislation to prevent their corrupting influence on children and young persons.

Michigan, by an act regulating the employment of children, young persons and women, forbids factory employment as to children under ten years of age, and extends the prohibition to children under fourteen years of age, unless they have attended school for at least four of the twelve months preceding the month of employment. It also requires the provision of seats for female employees in factories, work-shops, warehouses, stores and hotels, when not necessarily engaged in active duties.

By another act, reformatory schools are established for juvenile disorderly persons, among whom are classed habitual truants from any school in which they are enrolled as pupils; children who, while attending any public school, are habitually and incorrigibly disobedient, and vicious and vagrant children.

The act provides for due notice to parents or guardians before the enforcement of the law.

In New York, the "Child-labor bill," so called, contains kindred provisions to protect children from being over-worked.

Massachusetts, by a stringent amendatory act, increases the penalties of the crimes of seduction and enticing into houses of assignation, and raises the age of consent of females from fourteen to eighteen years.

WOMEN AND THE DOMESTIC RELATIONS.

Noteworthy legislation concerning women and the domestic relations is comprised in a few enactments.

Massachusetts, by an amendment of the law relating to divorce suits, prohibits the filing of a libel for divorce, where the libellant has removed into the commonwealth for the purpose of obtaining a decree of divorce within five years prior to the filing of the libel. By another act the same state makes the procurement of a false or fraudulent decree of divorce a crime punishable by fine or imprisonment.

New Jersey extends the jurisdiction of the Court of Chancery to cases of absolute divorce where the cause of action arose out of the state, provided the complainant or defendant was, or shall have been, a resident of the state for three years next preceding the time of filing the bill.

Maryland requires a residence in the state by the applicant for two years preceding an application for divorce.

By Chapter 150 of the laws of Massachusetts of 1886, women are declared eligible to serve as overseers of the poor.

New York permits women to vote at school meetings.

Connecticut provides that no person shall be married until one of the parties shall under oath inform the registrar of the town of the name, age, color, occupation, birthplace, residence and condition, as to being single, widowed or divorced, of each contracting party.

Maryland requires parties contracting marriage to procure

a license, or the publication of bans, as a prerequisite of the validity of the marriage.

South Carolina has adopted the rule prevailing in other states, that on the death of a married woman, intestate, her husband shall be entitled to the same share of her estate as is given by law to the widow out of the estate of her husband.

A statute of Mississippi adds to the catalogue of punishable crimes and misdemeanors the teaching of polygamy, the inducing of any person to embrace it, and the emigrating to other states or territories for the purpose of embracing it.

By another statute of Mississippi husband and wife are made competent witnesses against each other in all controversies between them. This law would possibly be more satisfactory to the gentler sex if it contained a provision securing to the wife on the witness stand the last word; but it is in the line of the legislative policy of Mississippi, a state which, as our esteemed member of its General Council remarks, has made a complete removal of the common law disabilities of married women, the Code of 1880 providing that as "to contracts and property she shall be as if she was not married;" the marriage contract itself, we must suppose, is excepted by implication.

PUBLIC HEALTH AND SAFETY.

In legislation intended to protect the public health and safety, numerous laws appear on the state statute books of this year, establishing rules which are becoming quite common as subjects of statutory police regulation.

In Georgia, Kentucky, Maryland, Ohio and Virginia the sale of morphine or any of its salts is prohibited, unless in scarlet wrapping with prescribed label; while in New Jersey a general law regulating the practice of pharmacy includes similar and more comprehensive regulations. Pharmacy and the practice of medicine are also made the subject of special statutes in Virginia and Michigan; while in Georgia, the regulations of a like statute are extended to practitioners of dentistry.

In Iowa, careful provisions for the inspection of mines by qualified officials, to insure proper ventilation and safeguards against accident by explosion, are embodied in a statute intended for the safety and protection of persons employed in the hazardous labor of mining.

• Ohio, by an amendatory act, makes most minute and stringent regulations for safety apparatus and other precautions in the conduct of mining operations.

In New Jersey, statutes have been passed to regulate the manufacture and sale of dynamite and other explosives. The distance of one thousand feet from any public road is prescribed as the limit within which it is forbidden for the future to store or keep such explosives, except in fire-proof magazines, and in quantity not exceeding two thousand pounds; and the carriage of giant powder, dynamite and nitro-glycerine on any railroad train carrying passengers is absolutely prohibited as a misdemeanor.

A statute of Michigan makes the keeping of the same explosives for unlawful purposes a felony. New Hampshire has passed a similar act.

That portion of the traveling public in the state of Mississippi who are not smokers, is protected by a statute providing that the payment of first-class fares shall be furnished with first-class passage, which is defined to be in "any suitable car in which smoking is not allowed."

Automatic car coupling is made obligatory by a statute of Michigan, which requires that provision shall be made by all railroad corporations to couple and uncouple all cars without the necessity of the brakeman or any other person passing between the cars.

A like particular instance of statutory care for railroad employees, is the act of Massachusetts requiring every railroad company, before January 1, 1887, to adjust, fill or block the frogs, switches and guard-rails on its track, with the exception of guard-rails on bridges, so as to prevent the feet of its employees being caught therein.

A statute of the same state requires that in every manufacturing establishment, where steam machinery is used, means of communication by speaking tubes, electric bells or other means of communication between each room where the machinery is placed and the room where the engineer is stationed shall be provided; and, by another act, all accidents in such establishments causing death or bodily injury to an employee while at work must be reported within four days to the police authorities.

Railroad companies are required by a Georgia statute to post on bulletins, at every station, the time that passenger trains are delayed beyond half an hour, and the wrecking of railroad trains is made a felony.

In Michigan, an act to protect all citizens in their civil rights requires full and equal accommodations, facilities and privileges for all citizens alike, of every race and color, in public conveyances, inns, restaurants, barber shops and places of accommodation or amusement.

PUBLIC MORALS.

Under this head the legislation of the several states exhibits a growing disposition to adopt regulations for the correction of prevalent social evils.

Some of these have already been mentioned as relating specially to the oversight of children. Laws against the circulation of obscene literature have been enacted in Connecticut, Iowa, Kansas, Maryland, Michigan, New Hampshire and South Carolina. Statutes against gaming, gaming-houses and instruments form a part of the enactments of Connecticut, Georgia and Kentucky. In the last named state the setting up of any keno or faro bank, or conducting, for hire or compensation, any game of cards, for money, is made punishable by fine or imprisonment, and the offender is to be deemed infamous, after conviction, and be disqualified from exercising the right of suffrage or holding office.

Several of the states in which legislative sessions have been held this year have dealt with the subject of the traffic in

intoxicating liquors. All of them concur in the necessity of more rigorous measures of regulation, but none of them coincide in the methods of regulation. Public opinion on this subject is nowhere more clearly reflected than in the widely varying enactments by which the police power is brought to bear, with differing degrees of force, upon this ever-present evil.

In the legislation on this subject which finds a place in the statute books, some of the acts indicate a settled policy of prohibition, while others are merely tentative.

In Iowa, the existing prohibitory law, one of the most sweeping in its provisions of any which has been enacted, is strengthened and made more stringent by an amendatory statute specially intended to make the law more certain of enforcement in the prevention of the illegal shipment or carriage of intoxicating liquors, and in the detection and punishment of contrivances for evading its provisions.

In Georgia and Mississippi the prohibition sentiment manifests itself in the enactment of "local option" laws authorizing the determination of the question of prohibition by the popular suffrage. In the latter state the submission of the question to the people is to be on the petition of one-tenth of the qualified voters, at an election not to be held within sixty days of any general election, and if a majority of the votes cast shall be against the sale, it shall be unlawful "to sell, barter or give away, or to induce trade at any place of business, or furnish at any public place any intoxicating liquors;" if the vote shall be in favor of a sale, a license to retail may be granted by the proper authorities under prescribed conditions. The manufacture and sale of domestic wines and cider are permitted; also the sale of alcohol for medicinal or scientific purposes, and physicians may dispense intoxicants for the use of their patients.

Mr. Reynolds, the member of our General Council in Mississippi, reports that in the counties in the state which have voted under the law, those where the whites are in the majority vote for prohibition. This, he remarks, is a "noteworthy change,"

not in the "statute law," but in the tone and morals of the people, which it is a pleasure to "note." He adds, "besides this general local option law, as if the legislator was unwilling to trust his constituency on the question, there are a number of acts prohibiting the sale in certain localities and under severe pains and penalties; all contain the saving clause, that physicians may dispense the article for the use of their patients; how many patients have been benefited we are not able to note, but venture the opinion that the article is freely dispensed and the patients numerous."

In Maryland, local option is provided for in respect to several counties and local municipalities, and in other places regulated by special act. A statute on this subject, relating to Anne Arundel county, recites in its preamble that doubt and uncertainty exist in the minds of a large portion of the voters whether local option, as existing in that county, produces beneficial results, and a new election is therefore ordered.

Nowhere is the struggle between experimental legislation against the evils of intemperance and the irrepressible vigor of those who promote the traffic in intoxicating liquors more active than in the state of Ohio. The constitution of 1851 prohibited the granting of any license to traffic in intoxicating liquors, but authorized the legislature to provide against evils resulting from the traffic. This was prohibitory against licensing the trade, but permissive as to its existence, and the legislature and the courts of Ohio have ever since been wrestling with the problem how to regulate the traffic without, by implication, licensing it. Conflicting opinions of judges and contradictory decisions of the courts have led to varying legislative enactments, resulting, at the last session, in the passage of a law levying a direct tax on the proceeds of sales of liquor, to defeat which, as a last resort, its opponents in the senate absented themselves from the halls of legislation and left the body of which they were members without a quorum. The act was, however, passed and approved, and the validity of the organization of the Senate at the time of its passage

has been established by a recent decision of the Supreme Court of Ohio.

Rhode Island, by an act for the suppression of intemperance, which took effect on the first day of July, 1886, prohibits, in the most sweeping terms, the manufacture or sale, except for artistic, mechanical or medicinal purposes, and then under stringent regulations, of all intoxicating liquors, including malt liquors.

Kindred in their nature to the laws aimed at the vice of intemperance, and very significant as indicating an enlightened public sentiment as to the best methods of its gradual repression, are the provisions in the statutes of Connecticut and Iowa, requiring that instruction in physiology and hygiene, relating specially to the effects on the human system of alcoholic liquors, shall be taught as branches of study in the public schools, whose teachers must be examined as to their qualifications to give such instruction.

Congress has also provided, by a similar act, that the same special instruction shall be included in the branches of study in the common and public schools in the Territories and in the District of Columbia and in the military and naval schools, and taught by the use of text-books as thoroughly and in the same manner as other like required branches are taught in such schools. After January 1, 1888, no certificate to teach in the public schools shall be granted to any person who has not passed a satisfactory examination in physiology and hygiene with special reference to the nature and effects of alcoholic drinks and other narcotics upon the human system.

LABOR.

Labor legislation has received a new impulse from the disturbances in railroad and other industries set on foot and maintained during the past months by organizations ostensibly in the interest of the working people, but in their practical effects at war with the good order of society. The lawlessness and violence which were the sequel if not the fruit of the labor

agitation and of the strikes, found their limit when they sought to assert a tyranny foreign to our soil and our ideas, and when they came into conflict with the penal law and the supremacy of justice. But public opinion, which is sufficiently self-asserting and sufficiently discriminating when a great wrong, a great peril, or a great crime are suddenly in sight, while swift to stamp out the first venomous uprising of anarchy, was also not slow to discern whatever of justice and reason there might be in some of the demands of labor, however badly championed. Hence arose a body of statute law which, like Jonah's gourd, grew up in a night. Statutes of Connecticut, Iowa, Kansas, Massachusetts and New York provide for tribunals of arbitration to settle disputes between the employer and employed, jurisdiction depending, of course, upon the voluntary action of both parties, a method unknown and alien to the common law, and little noteworthy except as a new illustration at once of the Anglo-Saxon passion for remedial legislation as a panacea for evils which can best work their own extinction, and of the truth conveyed in the philosophic couplet—

“How small, of all, that human hearts endure,
That part which laws or kings can cause or cure.”

Legislation on labor of a more practical character is found in a statute of Massachusetts, providing for the weekly payment of wages by corporations; another, of Rhode Island, requiring a like notice of intention on the part of an employer to discharge an employee, as the employer requires of the employee in respect to an intention to quit work, as a condition in either case of forfeiture of wages. The intermeddling by strikers with other laborers is prohibited in New Hampshire by a very stringent law, and to the catalogue of offences is added the speaking of offensive or derisive words addressed to any person passing along any street to, from or about his lawful business or occupation, or “the making any noise or exclamation in the presence or hearing of such person, so

passing, with intent to deride, offend or annoy such person, or to prevent him from pursuing and engaging in his lawful business."

TRADE.

In the subjects with which legislation in respect to trade has occupied itself, oleomargarine outranks the rest. It has given a new word to our vocabulary, a new term to the nomenclature of science, and a new problem of constitutional law to the courts, while to the legislators of our agricultural states it has, in the sphere of statutory regulation, opened "fresh fields and pastures new." It is certainly a pleasing indication of our national prosperity that, while in so many old-world communities the scanty supply of bread is not infrequently a source of distress and disturbance, the only question concerning the staff of life which disquiets the American citizen is how to prevent his bread and butter from becoming surreptitiously converted into bread and oleomargarine. And it is especially gratifying in this period of crimination and recrimination as to the sincerity of our political parties and partisans in the matter of reform in government and its administration, and in the midst of constantly recurring instances of malfeasance and corruption in public officials, to note the spontaneous zeal of our political leaders and legislators, without distinction of party, in the interest of pure butter!

New York, after passing, in 1884, an act which the Court of Appeals condemned as unconstitutional, because so sweeping in its provisions as to be in restraint of lawful trade and industry by prohibiting the sale of any article, even by its true name, which might be used as a substitute for butter, corrected its error at the last session and enacted a statute which prohibits, under heavy penalties, the sale, under the name of butter or cheese, of any substance or article not the product of unadulterated milk or cream.

Ohio, by an act of seventeen sections, to prevent adulteration and deception in the sale of dairy products, amendatory of and supplementary to former legislation on the same subject,

seems to have surrounded her dairies with a cordon of regulations intended not only to protect the most innocent of her citizens against spurious butter and cheese, but even the worst criminal in the state, as section 14 provides that no butter or cheese not made wholly from pure milk or cream and harmless coloring matter shall be used in any of the charitable or penal institutions of the state. Cows are put on a higher plane of protection and security than many boarding-house lodgers by a section making it an offense punishable by fine or imprisonment, or both, "to feed cows on unhealthy food." A further provision requires every person dealing in any substance resembling butter or cheese, and not made of the permitted ingredients, to keep in a conspicuous place a card, not less than eight by ten inches in size, on which shall be printed in plain, bold black letters, not less in size than eight-line pica, the true name of such substance, and also the words "imitation butter," or "imitation cheese, sold here," and when butter or cheese is asked for the placarded substance shall not be sold or furnished.

Maryland, New Hampshire, New Jersey and Iowa have passed acts in the same direction dissimilar in their terms from each other and from the New York and Ohio statutes. In fact this recent oleomargarine legislation, called for by an exigency arising in part from the inventive fertility of our scientific age and in part from the ineradicable passion of our fallen human nature to palm off as a genuine article its cunningly devised counterfeit, presents a striking illustration of the diversified methods of our state legislatures which, while aiming at a single, well-ascertained and conspicuous mischief, which could easily have been dealt with in every state by statutes almost identical in their terms and provisions, instead of seeking for similar forms of enactment, struck out at it wildly, and in some instances blindly, but with a kind of consentaneous vigor quite remarkable in deliberative bodies.

In Congress, the House of Representatives passed an act imposing special license taxes on manufacturers of oleomargarine and a direct tax of five cents per pound upon the

article; the amount of tax was reduced by the Senate to two cents a pound, and the bill, thus amended and providing that all packages containing the article shall be stamped and branded, received the approval of the Executive, after some hesitation, accompanied by suggestions of doubt as to the constitutionality of certain provisions of the act.

State legislation stopped at the point of protecting the public against being imposed upon by sham butter and cheese. Oleomargarine and its compounds were left to stand or fall on their own demerits when dealt in under their own names. Congress, under its delegated power, levies a direct tax on the traffic in the articles themselves, and thus the offending substance comes, in any event, under the pains and penalties of the law. As an imitation it is prohibited, and as a genuine article it is taxed, a case in which the double dealing is almost as conspicuous in the remedy as in the mischief.

Other noteworthy instances of legislation affecting trade and commerce, are statutes of New Hampshire regulating the sale of veal; of Iowa, prohibiting traffic in diseased hogs; of Ohio, to prevent deception in dealings in grain; of Michigan, to guard against the adulteration of honey, and of the same state requiring the inspection of fertilizers and regulating their sale, and like statutes of Maryland and Kentucky. The last-named state imposes a heavy license fee on venders of lightning-rods, and the inhabitants of the rural districts of Kentucky will have the satisfaction of knowing that their premises cannot be lawfully invaded by the lightning-rod man until a payment of two hundred and fifty dollars into the state treasury has first been made.

A statute of Maryland, beneficent in its intention as to the public but somewhat invidious in its application, is entitled "an act to prevent incompetent persons from conducting the business of plumbing in the city of Baltimore," and confines the practice of that useful industry to skilled persons to be licensed after examination by a "State Board of Commissioners of Practical Plumbing."

Kansas punishes as a misdemeanor, and by fine and treble damages, any person who shall misrepresent, deceive or defraud any other person in the sale of any fruit, shade or ornamental tree, vine, shrub, plant, bulb or root, by substituting inferior or different varieties, or who shall falsely represent the name, age or class of any such natural object.

Our esteemed member of the General Council in Kansas suggests to me in reporting this statute that it is the work of some injured statesman who has fallen a victim to the arts of an enterprising tree agent. But, if this be so, he found a sympathizer in the legislature of New Jersey, which has just passed a similar statute to protect persons in buying fruit trees and fruit briars, by which any misrepresentation of the name or nature of fruit trees or briars is made a misdemeanor, punishable by a fine not exceeding one hundred dollars and imprisonment in the county jail not exceeding three months, or both at the discretion of the court.

Statutes of this kind will find advocates for their enactment in many states of the Union, especially among suburban proprietors who on their change from city pavements to green fields too often fall an easy prey to the wiles of the horticultural agent who possesses the immense advantage of trading in an unknown tongue and can dignify the sale of a few shoots of that vulgar creeper the Dutchman's pipe into a transaction in *Sipho Aristolochia*.

CORPORATIONS.

Under this head a noteworthy statute of New Hampshire prohibits all corporations not created by the laws of the state from entering into any compact for regulating rates of insurance, and provides that in all cases of total loss by fire, the amount of damage recoverable by the insured shall be the amount expressed in the policy.

This statute is described by the member of our General Council for New Hampshire as the "famous act," on account of which the foreign insurance companies left the state. It

proved as effectual an act of expulsion for all the leading foreign companies as that by which the Orleans Princes were driven out of France. Fifty-eight of these corporations, representing an aggregate capital of \$120,000,000, withdrew from the state, leaving the insurable property within its boundaries with no means of protection against fire except the policies of home companies, having altogether a capital of only \$2,000,000, and those of a class of foreign companies designated by the insurance commissioner of New Hampshire in terms doubtless sufficiently intelligible in the vernacular of insurance as "irresponsible buzzards and wild cats ranging through the state on a hunt for premiums." Other acts imposing stringent regulations on foreign surety companies and agents and officers of local companies. It has been a bad year for corporations in New Hampshire. Foreign insurance companies are also placed under special disabilities by a statute of Iowa.

New York requires a standard form of fire insurance policies, but wisely permits the form to be prepared by the New York Board of Fire Underwriters.

Michigan, by an act passed over the Governor's veto, provides for minority representation in boards of directors of corporations by cumulative voting, each stockholder being authorized to vote for as many directors as he holds shares of stock, multiplied by the number of directors, and to distribute his votes on the same principle among as many candidates as he shall see fit. This mode of securing minority representation the legislature of New York made applicable to municipal elections in the city of New York by a bill, which, after passing both houses, failed to receive the executive approval.

Telegraph companies are made liable by a statute of Mississippi to fine in addition to damages recoverable by law, for failing to transmit and deliver messages within a reasonable time and without reasonable excuse.

By a statute of Massachusetts, corporations employing labor are authorized to issue special stock, to be held only by their employees, at the par value of ten dollars per share, to be paid

for in monthly instalments of one dollar on each share and to be entitled to dividends, when declared, in the proportion in which the par value of such special shares bears to the par value of the general stock. Such special shares are made transferable only to employees or to the corporation, which may provide by its by-laws as to the number of shares which may be held by any employee and the mode of transfer, and for redemption in case of the holder ceasing to be an employee.

In Michigan, provision for the formation of corporations for the cultivation of art and art education, and for maintaining free library and reading rooms by public tax, appear in the statute book. A statute of Connecticut permits corporations, if they see fit, to distribute a portion of their profits among employees.

The fearful ravages of cyclones have induced a new form of insurance, and Michigan has enacted a law for the incorporation of mutual insurance companies to insure against cyclones, wind storms and tornadoes.

In South Carolina, the individual liability of holders in corporations, including banks and savings banks, is reduced from ten to four per centum of the par value of the shares held by them at the time the demand of the creditor was created.

LEGAL RIGHTS AND PROCEDURE.

In the department of legislation affecting legal rights and procedure, with which we as lawyers are especially concerned, the statutes of this year are in the direction of that simplification of legal methods which marks the progress of the law as a science and as a means of social safety.

Georgia, following the example of most of the other states, has abolished the distinction between common law and equity jurisdiction, and permits suitors to avail themselves in all her superior courts of equitable as well as of common law process and relief.

New Hampshire provides by a special act that all actions and causes of action shall survive; by another, that the depositions of parties, if taken, shall be filed.

Michigan enacts that in all judicial proceedings, civil or criminal, a written instrument, to which there is a subscribing witness, may be given in evidence without calling such witness, except when one or more subscribing witnesses are made requisite to the validity of the instrument.

The same state authorizes the specific performance, by guardians of insane or other incompetent persons, of contracts made by their wards for the conveyance of real estate; and by another act forbids the sale of any blank form of deed containing the words "warranty deed," or any words implying that it is a warranty deed, unless the deed is in fact a warranty deed.

An important regulation by a statute of Michigan of the right of recovery in libel suits is noteworthy for its tender consideration of newspaper publishers. The plaintiff is limited to actual damages sustained and proved when it appears that the alleged libel did not involve a criminal charge, was published in good faith, and that its falsity was due to mistake or misapprehension of facts, provided that in the next regular issue of the newspaper, after the mistake or misapprehension was brought to the notice of the publisher, whether before or after suit, a correction is published in as conspicuous a manner and place as that in which the libellous article appeared. This would seem rather to be a premium upon scrutiny and care after the libel, to avoid punishment, rather than before it to prevent its utterance.

In Mississippi a special act provides that bills of lading shall be conclusive evidence of what is recited in them in the hands of *bona fide* holders; a statutory expression of the commercial law as it has been substantially established by the courts.

South Carolina provides that in actions for the recovery of lands and tenements, whether legal or equitable, betterments

made in good faith under the belief that the title was good shall be allowed for—thus incorporating in the statute law a well-settled rule of equity jurisprudence.

Virginia, by a statute which is a transcript of the act of Congress on the same subject, permits persons charged with crime to testify in their own defense. This is the only noteworthy change of the law of procedure in Virginia. The member of our General Council for that state reports that the entire body of the statute law is undergoing revision by a commission, whose report will be ready for the action of the General Assembly at a special session to be called in the fall of this year.

Connecticut provides for appeals by the state, with the permission of the presiding judge, in criminal cases, to the Supreme Court of Errors from rulings and decisions of the Supreme Court on questions of law. Heretofore no appeal was allowed except to the accused. Attorneys-at-law are prohibited by statute from giving bonds in criminal cases. By a special statute no person can be extradited on the requisition of a governor of another state until opportunity is afforded to apply for a writ of *habeas corpus*.

Analogous to the last-mentioned statute of Connecticut is one passed by Kansas, which makes it a condition of surrender of fugitives from the justice of the state where their alleged crimes were committed, that in addition to authenticated copies of the indictment or information, "sworn evidence shall be furnished that the demand for the surrender of the party charged is made in good faith for the punishment of crime and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him or her with civil process."

"This law," says the member of the General Council for Kansas, "was doubtless enacted to check the growing practices of eastern wholesale merchants who had become ingenious in converting a purchase of goods on credit into an obtaining of property by false pretenses, and armed with a requisition

from the governor of Missouri, Illinois or elsewhere, as the case might be, would hale the luckless country merchant before some criminal court of St. Louis or Chicago to answer such a charge, with the sole aim and purpose of collecting their debt and then turning the alleged 'fugitive' loose."

Georgia also has enacted regulations looking to greater caution in the surrender of persons under requisitions by governors of other states.

Reverting to the statutes of Connecticut, a noteworthy departure from the spirit supposed to have at one time characterized the legislation of that state, is a statute providing that no person shall be disqualified as a witness on account of disbelief in a Supreme Being.

The common law contented itself so far as the relation of innkeeper and guest was concerned in protecting the guest against loss or injury while the relation continued. Modern legislation comes to the aid of the host, and we find a statute of Ohio prohibiting, under the penalty of fine or imprisonment, or both, the obtaining of any accommodation in any hotel, boarding or eating-house with intent to defraud the owner or keeper thereof, and proof that the imposition was effected by any false or fictitious show of baggage, or neglect to pay for the entertainment received, is made *prima facie* proof of the fraudulent intent.

A statute of Kentucky authorizes the erection of appropriate memorial tablets by the personal representatives or heirs-at-law of a decedent at the expense of his general estate and as a charge of administration; a somewhat peculiar provision, but apparently a wise means of securing a suitable memorial in view of the many cases in which the subject of it neglects to create it during his lifetime, and the same neglect is continued by those who survive him.

Another statute of Kentucky provides that defendants in criminal cases may testify in their own behalf, and still another introduces as a rule of evidence the comparison of handwriting in cases where the genuineness of writing is in dispute.

In New York a noteworthy change in the department of legal rights and procedure is the amelioration of the law relating to imprisonment in civil actions by a limitation of six months as the extreme period of confinement in the debtor's jail or within the jail liberties. The Speaker of the New York assembly, in his closing address to the members, at the adjournment, alluded to this statute in the following pathetic and pictorial language: "The poor debtor languishing in Ludlow Street Jail, bereft of hope and dying in despair, raises his hands to heaven and calls you blessed." An equally prompt, and perhaps more effective, call on the part of these despairing prisoners was for writs of *habeas corpus*, under the operation of which an immediate Ludlow Street Jail delivery took place. This law is not only in keeping with the enlarged humanity of the age, but will also be serviceable in diminishing the number of arrests on civil process, and the trial of the question of fraud, deceit or the other evil practises for which orders of arrest are authorized, on affidavit, on motions to discharge. And it is also serviceable in requiring merchants to exercise more circumspection in the matter of credits, and to apply with greater vigilance the improved maxim—*Caveat vendor*.

Another step in the line of the humanities is a New York statute which appoints a commission to investigate and report to the next legislature "the most humane and practical method known to modern science of carrying into effect the sentence of death in capital cases." This is a reflection on the statute book of a public sentiment which has its basis in a benevolence, sometimes misdirected, yet belonging to the better part of human nature. But while these philanthropic measures may comport with the maintenance of justice and the due severity of her penal laws, we cannot shut our eyes to the fact that the cunning and greed and rapacity of crime, in their subtler methods, keep pace with the march of civilization and refinement. In old times the footpad and highwayman contented themselves with the purses and trinkets of an occasional

traveler. The modern gang of thieves, as in the case of the main thoroughfare of our greatest commercial metropolis, put Dick Turpin to the blush by stealing the highway itself and leaving it in such a state of uncertainty as to the ownership of its easements that a special statute of New York was required to disentangle the intricate network woven by its captors.

In Maryland two amendments of the law of legal procedure have been made to expedite proceedings in civil cases. Monthly rule-days have been established in the courts of Baltimore, at which trial calendars are made up in substitution for the three terms formerly held during the year; and an additional yearly term of the Court of Appeals has been created, making three terms instead of two.

Mr. Hinkley reports that these changes will reduce the average time occupied in a contested case, including the hearing in the Court of Appeals, to about nine months, instead of about eighteen months, as heretofore. He very naturally connects this substantial reform in the Maryland practice with the action of this Association at its last session on the subject of "Delays in Judicial Administration."

No subject within our cognizance is of greater or more urgent importance, and it is a vital necessity that we should not relax our efforts to secure permanent changes and reforms in the methods of legal procedure.

The duty is enhanced by the almost total neglect of our legislatures, State and Federal, to meet the emergency by any remedial laws or even to consider the subject at all.

In the state of New York, with a body of judicial officers numbering—from the judges of the Court of Appeals to the magistrates exercising judicial functions of the lowest grade and excluding coroners—nearly four thousand, the rights of suitors are still hindered and imperilled by useless and vexatious delays, for which no statutory remedy has yet been adopted by our legislature, and the same reproach rests upon the judicial administration of most if not all of the states.

GENERAL GOVERNMENT.

Passing to the wider sphere of government and of general law, I advert briefly to the most conspicuous changes in the statute law of the several states.

Connecticut has enacted a law forbidding and punishing as a crime the receipt by any public officer, trustee or agent, or any member of any board of management of any public or private corporation or institution, of commissions or other compensation, gratuity or interest in any sale or contract connected with the business of such corporation or institution, also forbidding any person connected with any institution receiving aid from the state to furnish supplies or having an interest in furnishing them, unless as the lowest bidder after open competition. /

An act of New Hampshire forbids savings bank officers to act as agents for other corporations or to receive any inducement from borrowers to make loans by their banks.

The act to aid and promote purity of elections has, after defeat in previous years, become a law at the last session of the New Hampshire legislature.

Virginia has passed two separate statutes, one "to define and punish champerty" and the other "to define and punish barratry." The first act provides that any person who shall solicit, procure or induce any suit, action, petition or motion to be brought, filed or made against the state of Virginia or any citizen thereof, by verbal representation or by writing or printing, shall be deemed guilty of the offence of champerty, and, on conviction, adjudged guilty of a misdemeanor and punished by fine of not less than one hundred dollars nor more than three hundred dollars for each offence, or by imprisonment for not more than sixty days, or both, in the discretion of the jury. The second act provides that any person licensed to practice law in any of the courts of Virginia, who shall solicit, procure or induce any action, suit, petition or motion as above against the state, or any citizen thereof, by verbal representations or by writing or printing, shall be deemed guilty of the offence

of barratry and provide for the disbarring of the offender. If these statutes are to be taken as meaning what they say, the practice of the law in Virginia seems likely to become an expensive luxury unless the lawyers can find an abundant supply of non-resident defendants. Probably the sweeping terms of the law will be confined by construction to cases of stirring up law suits which it is the policy of the state to exclude from her own or the federal courts.

Free public libraries are authorized by law in Ohio under certain restrictions to be maintained in cities of a population not exceeding thirteen thousand, of two thousand volumes and over by direct tax not exceeding one-tenth of a mill on the taxable property.

Kansas also makes a similar provision for public libraries.

In New Jersey a pension of one hundred dollars per year is accorded to soldiers of the war of 1812. In Michigan all discharged soldiers, sailors and marines are exempted from poll-tax.

Soldiers are exempted from poll-tax and Decoration Day is made a legal holiday by Kansas, Ohio and Rhode Island.

New Hampshire provides that poor soldiers and their families shall be supported at their own homes, instead of at the county institutions; and Ohio makes special provision for the same class.

Ohio, by a stringent statute, makes the advertising of lotteries in any form a misdemeanor.

Michigan creates an advisory Board of Pardons, one of whom is to be an attorney and another a physician, to investigate and report on all applications for pardon of convicts or commutation of sentence. Mr. Wells, the member of the General Council, reports that the governor has been greatly aided and relieved by the practical operation of this act.

Mississippi, by a series of well-considered acts, protects the rich alluvial district of the Mississippi region from the overflowing of the river.

Acts for the protection of game and fish find a place in the statute books of Georgia, Iowa, Massachusetts, Maryland,

Kentucky, New Jersey and Michigan. New York prohibits the shooting or killing of song birds or wild birds, not game birds, at any time or for any purpose, but specially excepts the English sparrow from the benefit of the act.

A brief notice is in place here to what may be called agricultural legislation. Under this head a noteworthy statute is that of South Carolina, giving to landlords a first lien on the crops of the tenant for rent and to laborers a lien next in order of priority to the extent of the sums due them for aiding in making crops, and a special act prohibiting the stealing of vegetables.

Georgia, by a statute, encourages the search for phosphates.

Michigan provides for the publication and dissemination of useful information derived from its agricultural college. Also by another act for the collection of apiarian statistics as to the production of honey and wax.

Connecticut has passed a law to encourage the planting of forest trees, which provides for the appointment by the governor annually, in the spring, of an "arbor day" for tree planting, and exempts from taxation for twenty years land not worth over twenty dollars an acre, on which the owner shall have raised by planting lumber trees, of the average height of six feet, of any of the following kinds, to-wit: chestnut, hickory, ash, white oak, sugar maple, European larch, white pine, black walnut, tulip or spruce, not less in number than twelve hundred to the acre.

New Hampshire by joint resolution makes provision for a like appointment of an arbor day by executive proclamation with the advice and consent of the council.

In the legislation of Congress a careful inspection of the enactments of the session of eight months, just terminated, discloses the fact that out of the eleven hundred and one acts which passed both houses, and the nine hundred and eighty-seven which became laws, those of general interest to the whole country, as distinguished from local or class legislation,

or the satisfaction of claims on the treasury, can be counted on the fingers of one hand.

I have already adverted to the act requiring instruction in the public schools in physiology and hygiene, and to the oleomargarine act. Next in order, but first in importance, and the most noteworthy enactment of the national legislature, is the law providing for the event of a vacancy in both the offices of President and Vice-President of the United States. The terms of this important statute are well known. They entrust the executive power to the secretary of state, or in case of his disability, to the heads of the departments of the treasury, of war, of justice, of the post office, the navy and the interior, successively, in the order named, until the disability of the President or Vice-President can be removed, or, in case of death, until a President shall be elected. This is a rare instance of a statute as to which we may all join in the common wish that it may never take effect. But at the time of its passage and approval, January 19, 1886, it was a tardy provision for an emergency, the possibility of which was brought into prominence by the sudden death, during the recess of Congress, and while the senate was without a president *pro tempore*, of Vice-President Hendricks. This sad event, thus linked with the statute just adverted to, deprived the country of a public servant, whose sterling worth of character bore in a special manner the true American stamp of self-reliance, independence and public spirit. Of the people and near the people, his death called forth a general testimonial of regret and respect, singularly akin in its expression to the native elements of his honest and robust nature. As a member of this Association, and a brother honored in our profession, this word of commemoration finds in the opening hour of our meeting its fitting place as a tribute to the memory of an able, fearless and honest man.

Nor may it be out of place to link with this brief mention of Vice-President Hendricks, a passing tribute to the memory of that eminent member of our profession whose name, associated

with his in 1876 in the candidacy for the highest offices in the gift of the people, is now and within a period of less than twelve months from his death inscribed with his on the roll of the nation's dead; and in the near retrospect of his finished career, speaking of Governor Tilden to his brethren of the American Bar, I may be permitted a simple attestation of his thorough training in legal principles, and his wise, far-reaching sagacity in their application to affairs, private or public, as the source and secret of his mastery, whether in council or in action, and the sure foundation of his claim to the grateful respect of his countrymen.

Beside the acts of Congress to which I have adverted, there are hardly any which have been passed in the exercise of the law-making power, from which I exclude all grants of pensions and other moneys and provisions for building bridges, light-houses and other public works. The permission to owners of United States merchant vessels, and of any property on board thereof, to sue the United States for damages by collision arising from mismanagement of any government vessel, is a wise departure from the rule which forbids the bringing of suits against the sovereign power by a citizen or subject, and which worked special injustice in the cases to which the remedial statute applies, while the act for the increase of the navy and that relieving the merchant shipping from fees for measurement of tonnage and other charges, and amending the regulations as to shipment and discharge of crews, all relate to national or commercial needs, in the department of our maritime interests, too long neglected.

The shortcomings of Congress in the matter of attention to the public interests compared with the long period of its session, have been made the subject of that general criticism and condemnation on the part of the press and the public, by which they content themselves with abusing what they consider abuses.

But as members of the American Bar we have our special and particular ground of censure in respect to the neglect of

Congress to remedy evils in judicial administration which are of long standing, of the gravest character and the most serious in their consequences.

In the face of an imperative demand for some provision for the relief of the Supreme Court of the United States for the burden imposed upon it by the condition of its docket, Congress has done nothing whatever to meet the emergency. The total number of cases on the docket of the term which ended last May was one thousand three hundred and forty; of these, four hundred and eighty-nine were added during the term, while the number of cases disposed of was only four hundred and forty, so that the docket has gained on the court forty-nine cases and it will begin next October term with a docket of nine hundred cases as against eight hundred and fifty-one last year. These figures, furnished by the clerk of the court, show that the delay to suitors in the court of last resort in our national judicial system is not only a present but a steadily-growing mischief. The means of relief are within the power of Congress by the adoption of anyone of the various plans which have been under consideration during several sessions, and in respect to which this Association has repeatedly expressed its opinion and urged immediate action in the interest of the right administration of justice. Meanwhile the practical administrators of the federal judiciary, in spite of the indifference and culpable neglect of Congress, has never been more servicable than during the past year. The task of the reorganization by means of legal proceedings of many of the great railroad systems has necessarily devolved on the circuit courts of the United States, and the promptness, ability and impartiality with which novel complicated questions of jurisdiction and of legal and equitable rights and procedure have been disposed of by our federal judges, deserve the high appreciation and commendation of the Bar.

If I may be permitted to express an individual opinion, I take leave to say that in my judgment the two things most needed to advance the public interest in the matter of legal

and judicial procedure are the increase of the number of United States circuit court judges, with proper provision for appellate courts and the assimilation of the methods of procedure in the state court to those of the federal courts in the practical abolition of costs and mere practice motions, and the cutting up, root and branch, of the abuse of the extraordinary remedies of injunction and other provisional writs or orders by expediting the hearing and determination of the main issue.

These things could be accomplished and made effective all over the country, if our legislative bodies would give to practical reform a tithe of the time misspent on trivial affairs.

CONCLUSION.

In the summary which I have thus attempted to give of noteworthy changes in the law, the few laws to which I have referred have been culled from a grand total of over six thousand statutes; a great mass including many crude, unwise, ill-considered and useless enactments, whose defects are made more conspicuous by comparing them with each other.

The waste of time, of thought, of physical strength and of the public money involved in our legislative methods, would be simply appalling if we looked at it solely in reference to the vast amount of labor expended as compared with the apparent results attained. The great mass of legislative acts relating to subjects which might be, and which in many states are remitted to simple judicial action, such as the change of names of individuals, those which deal purely with local matters, which under general laws could be remitted to the local municipalities, and the whole business of the creation and regulating of private corporations, might be and doubtless in time will be everywhere placed under general law. But meanwhile we must accept this waste as a necessary part of the complexity of our American system of numerous and intertwined state and federal sovereignties, an experiment whose basis is direct representative government by popular legislative bodies and which must needs work out its many problems at whatever

cost. Happily the evils of our legislation do not touch the core of the public safety so as to be remediless, and a sound public opinion already asserts itself against them. We may be sure that any real improvement and advance towards the perfection of that best government, which in governing least legislates least, must come from our own profession. If lawyers are not willing to aid by intelligent effort, by self-sacrifice, and by wise discriminating concert of action to simplify, purify and make more serviceable for the general good the methods of making and of administering the law, no one else ever will or ever can undertake the work, for to no other body of men is committed the sacred trust of making human justice in its manifold application to human wants and interests, conform to its original and divine pattern.

It is in the hope that our action here may conduce in some measure to this desired end, that I declare the ninth annual session of the American Bar Association to be now opened.

ANNUAL ADDRESS

BY

THOMAS J. SEMMES.

Gentlemen of the American Bar Association :

Before Rome became the master of the world, men were governed by a vast and miscellaneous mass of customary law, most of it, the most terrible tyranny ever known, full of stern, incessant, implacable rules. Roman domination destroyed it and substituted new institutions in its place. In this respect, the Roman Empire resembled the fourth beast in the vision of Daniel, "It devoured and broke in pieces and stamped the residue with the feet of it."

"Under the Roman Empire," says Sir Henry Maine, "mankind were arranged on one vast level surface, as so many equal units, connected by no institutions which are not assumed to be the creations of positive Roman law; between them and their sovereign there is nothing but a host of functionaries, who are his servants. When feudal Europe was constituted, all this was changed; everybody has become subordinate to somebody higher than himself; society has taken the form of a pyramid; the great multitude of cultivators is at its base; it mounts up through ever-narrowing sections until it approaches an apex in the Emperor, the Pope or God."

The same author says, "The theory of human equality is of Roman origin, and the comminution of human society, and the unchecked competition among its members, which have gone so far in the western Europe of our days, had its most efficient causes in the mechanism of the Roman state."

He further says, "There is no doubt that the disruption of the Roman Empire was very unfavorable to the personal and proprietary liberty of women. The place of women under the feudal system was worse than it was under the Roman law, and but for the efforts of the church would have been greatly worse. One monument of these efforts is the promise in the marriage service, 'With all my worldly goods I thee endow,' a promise which puzzles an English lawyer."

The church was carrying on the tradition of the Roman *dos*, the practical object being "To secure for the wife a provision of which the husband could not wantonly deprive her, and which would remain to her after his death."

I think it is now conceded, that the philosophers and juriconsults of Rome are still the instructors of the human race; it is in part with the materials which they have transmitted that the edifice of modern legislation in Europe has been constructed. Rome subjected Europe by its arms and has civilized it by its laws. Even early English law was not the spontaneous outgrowth of social needs, but was forced by a knowledge of the maturer system of Rome.

Prof. Güterbock says, "My own investigations have led me to adopt a view which is essentially the same as that of Spence. The external historical evidence, as well as the internal evidence of Bracton's work, itself demonstrates that no inconsiderable part of the Roman law must have been practically applied in England in Bracton's day. The same evidence also shows that Bracton has in general given a place to and reproduced only those Roman elements which he found were in England actually valid law; that is, such as were actually received. We must above all recollect the circumstances under which Bracton wrote. His purpose was of a purely practical character, namely, to lay down the English law for English judges merely, and to explain and to teach '*qualiter et quo ordine lites decidentur secundum leges et consuetudines Anglicanas.*' His materials were purely English materials, '*facta et casus qui quotidie emergunt et eventunt in regno*

Angliæ. His sources and authorities were equally English, being English judicial decisions and rules of law, which were applied or were to be applied by English courts. Recollecting these facts, we are at a loss to explain why Bracton should have mentioned the Roman law at all, if it was indeed an utterly foreign law, or if it had obtained no footing in the legal soil of England. Still less under such circumstances can we explain why he should have made use of the Roman law to the extent to which he did. He could not have done so for the judges, for they would have no need of it; nor for the students, for they could get a better idea of it from the *Corpus Juris Civilis* itself or from the law schools. Moreover, the manner in which Bracton discusses and treats the Roman law is decisively in favor of the view here maintained. There is no difference to be observed in his commentary, whether he is dwelling upon English or upon Roman principles. He passes over both alike. The reader, instead of getting the impression that sometimes domestic, sometimes foreign materials, are presented to him, finds before him the picture of an indivisible homogeneous whole, in which the Roman elements are no longer merely Roman law, but have become integral parts of the *leges et consuetudines Anglicanæ* * * * His work bears throughout the stamp of the author's fidelity to truth, but a great part of it would belie such a character, and he would himself be subjected to the charge of having falsified the law, if it be true that he has laid down Roman as English law for whole pages, without reserve."

There is no doubt that the enthusiasm for the study of the Roman law, communicated to western Europe by the teaching at the Law School of Bologna, reached the shores of England. The tale of the finding of a single copy of the Pandects at the siege of Amalfi, in 1135, though accepted by Blackstone, has been destroyed by the criticism of Savigny, which shows it to have originated long after the siege, and probably in the desire of the Pisans to maintain the superiority of their text over that of the rival school of Bologna. This school was

commenced by the lectures of Pepo, and was made famous by Irnerius and his successors, who illustrated the Justinian law by short notes called glosses, whence its teachers acquired the name of Glossatores.

The new study was enthusiastically received in Italy and France. In 1143, Theobald, Archbishop of Canterbury, brought to England in his retinue Vacarius, a Lombard, skilled in the new learning, who lectured at Oxford on the Roman Law, and wrote a work in nine books with a title which indicated that it was especially destined for the use of poor students.

Contemporary references to the law of the period show that men's minds were imbued with the Justinian writings. Giraldus Cambrensis, writing at the end of the twelfth century, refers to the Institutes of Justinian. Gervase of Tilbury, a little later, in computing the size of Britain, cites the Pandects as authorizing the measure he adopts. (Selden, c. 8.) The vision of the Monk of Evesham speaks of a certain monk as the most learned of the civilians and canonists of his time. (Selden, c. 8.)

The poem "*De Judicio Extremo*," written by Walter de Mapes in the twelfth and thirteenth centuries, in describing the stern justice of the last day, says:

"Judicabit iudices iudex generalis.
Ibi nihil proderit dignitas papalis.
Sive sit episcopus, sive cardinalis,
Reus condemnabitur, nec dicetur, qualis.
Ibi nihil proderit quidquam allegare,
Neque vel excipere, neque replicare,
Neque ad apostolicam sedem appellare;
Reus condemnabitur, nec dicetur, quare?
Cogitate miseri, qui et quales estis!
Quid in hoc iudicio dicere potestis!
Ubi nullus *Codici* locus, aut *Digestis*;
Idem erit dominus, iudex, actor, testis.

(Mackeldey Kauf. § 86, note.)

Glanville, who was Chief Justiciar during the reign of Henry II, wrote his treatise on the laws of England in the

interval between the years 1180 and 1190. Its preface is modelled on the proemium of the Institutes of Justinian. Bracton imitates it and Fleta has copied it. Traces of the Roman law are found throughout the work; they are so strongly marked as to have evoked from Bishop Nicholson the accusation of "aping the Roman Code."

Bracton's work was composed between the years 1156 and 1159. Sir Henry Maine considers it "One of the most hopeless enigmas in the history of jurisprudence, that an English writer of the time of Henry III should have been able to put off on his countrymen, as a compendium of pure English law, a treatise of which the entire form and a third of the contents were borrowed from the *Corpus Juris*."

I refer to this criticism, not for the purpose of adopting it as a just accusation of plagiarism, for I prefer the views expressed by Prof. Güterbock, but to show the extent to which the civil law had become a part of the law of England.

Fleta, so called from its composition in the Fleet prison by one of the justices imprisoned by Edward I, is believed to have been written about the year 1292, and is nothing but an abbreviation of Bracton, and the work called "Britton," which was composed between the years 1290 and 1300, is of the same character, except that it is written in the vernacular language, French, while Glanville, Bracton and Fleta are written in Latin.

So early as the fifteenth century, says Prof. Pollock, "We find a common law judge declaring, that, as in a case unprovided for by known rules, the civilians devise a new rule according to the law of nature, which is the ground of all laws; the courts of Westminster can and will do the like."

In the Postmaster-General's case, decided by Chief Justice Holt in 1701, that great judge says, "And this is the reason of the civil law, which, though I am loth to quote, yet inasmuch as the laws of all nations are doubtless raised out of the ruins of the civil law, as all governments are sprung out of the ruins of the Roman Empire, it must be owned that the

principles of our law are borrowed from the civil law and therefore grounded upon the same reason in many things. And all this may be, though the common law be time out of mind." (12 Mod. R. 482.)

Wood, in his *Institutes on the Civil Law*, p. 11, expresses the same idea. He says, "Upon a review, I think it may be maintained that a great part of the civil law is part of the law of England and interwoven with it throughout."

According to Dr. Cowell, who was a professor of the civil law at Cambridge University in 1605, the common law of England was nothing but a mixture of the feudal and the Roman law.

Sir William Jones, in speaking of the civil law, says, that "with all its imperfections it is a most valuable mine of judicial knowledge; it gives law at this hour to the greatest part of Europe, and though few English lawyers dare make such an acknowledgment, it is the source of nearly all our English laws that are not of feudal origin." (Lord Teignmouth's Memoirs of Sir Wm. Jones, vol. ii. p. 168)

Blackstone includes among the originals of the English law "the rules of the Roman law, either left here in the days of Papinian or imported by Vacarius and his followers." * * * (1 Blackstone, p. 36.)

There was at one time in England a disposition to question the authority of Bracton and Fleta as common law writers. In the Grand Opinion, a decision of the judges in 1717 on the sovereign's right of disposing of the education and marriage of his grandchildren, responding to an objection made by the counsel for the Prince of Wales to the authority of Bracton, Parker, C. J., said, "As to the authority of Bracton, to be sure many things are now altered, but there is no color to say it was not law at any time, for there are many things which have never been altered and are now law."

Fortescue, B., said, "The law books of Bracton and Fleta are the ancient law of the land extending to all cases. * * * These law books are so strong, that there has been no way

thought of to evade them but by denying the authority of them and calling them 'civil law.' * * * I have never known them denied for law, but when some statute or usage time out of mind has altered them."

Montague, B., said, "It is objected that this is civil law; that may be, and yet it may be and is the law of the land also, and these books are often quoted by the greatest judges and lawyers heretofore in England and allowed as law." (Fortescue's Rep. pp. 401-440.)

Blackstone includes Glanville and Bracton in the list of venerated authorities, and says, "The legal treatises written in Edward I's reign, as Britton, Fleta, Hengham and the rest, are for the most part law at this day, or at least were so till the alteration of tenures took place." (4 Com. pp. 427-8.)

Chief Justice Best, as the organ of the House of Lords, in delivering the opinion in the case of *Gifford vs. Lord Yarborough* (1828), after quoting a passage from Bracton, which was but a transcript from Justinian's Institutes, says, "But Bracton, by inserting this passage in his book on the laws and customs of England, presents it to us as part of those laws and customs. Lord Hale admits that it is the law of England in cases between subject and subject; and it would be difficult to find a reason why the same question between crown and subject should not be decided by the same rule.

"Bracton wrote on the law of England, and the situation which he filled, namely, that of Chief Justice in the reign of Henry III, gives great authority to his writings. Lord Hale, in his *History of the Common Law* (cap. 7), says, that it was much improved in the time of Bracton. This improvement was made by incorporating much of the civil law with the common law.

"We know that many of the maxims of the common law are borrowed from the civil law, and are still quoted in the language of the civil law. Notwithstanding the clamor raised by our ancestors for the restoration of the laws of Edward the Confessor, I believe that these and all the Norman customs

which followed would not have been sufficient to form a system of laws sufficient for the state of society in the time of Henry III. Both courts of justice and law writers were obliged to adopt such rules of the digest as were not inconsistent with our principles of jurisprudence." (5 Bingham, 163.)

Many principles, maxims and forms of actions considered indigenous to the common law are in fact of Roman origin.

The maxim that every man's house is his castle has been adopted from the Roman law. "*Nullum de domo sua in jus vocari licere, quia domus tutissimum cuique refugium ac receptaculum sit.*" (Dig. lib. 2, tit. 4, 18.)

So the maxim, that a legislative enactment ought to be prospective and not retrospective in its operation, is found in the Justinian Code. (Book 1, tit. 14, 7.)

The whole doctrine of *ex post facto* legislation, as explained in *Calder vs. Bull*, 3 Dall. 386, and *Kring vs. Missouri*, 107 U. S. 226, is tersely expressed by Paulus, "*Nunquam crescit ex post facto præteriti delicti æstimatio.*" (Dig. 50, tit. 17, 138.)

"*Libertas inæstimabilis res est*" comes from the commentary of Paulus on the Edict. (Dig. 50, tit. 17, 105.)

"*In pœnalibus causis benignius interpretandum est*" is the maxim of Paulus. (Dig. 50, tit. 17, 155.)

The priority of the government and its lien on the assets of insolvent debtors is derived from the Roman fiscal law; and the code required government causes to be tried by preference within six months after issue joined. (Code 10, tit. 1.)

The maxim, "That the laws are adapted to those cases which most frequently occur," is derived from the Pandects. (Book 1, tit. 3, 10.)

The precept, that no man should be condemned unheard, is not only Roman, but has been made classical by Seneca:

"Quicumque aliquid statuerit parte inaudita altera.
Aliquid licet statuerit, haud æquus fuerit."

So Ulpian taught that ancient custom has the force of law in the absence of express legislation. (Dig. 1, 111, 33)

The common law action on the case is but the "*actio de præscriptis verbis*" described by Papinian. (Dig. Book 19, tit. 5.)

The Emperor Constantine considered all forms as snares, and hence, in the year 342, he abolished all rules of pleading and the use of ancient formulæ; and from that time all actions, whether founded on the civil or Prætorian law, were framed as general actions on the case, and obtained the name of narrations or counts. (Spence, Origin of Laws, p. 192.)

This reform is similar to that recently introduced in England and adopted in several American states, by which the distinction between law and equity has been eradicated.

The *pie poudre* courts, which Blackstone mentions in Book 3, p. 32, of his *Commentaries*, and attempts to derive their name from the French, or from the dusty feet of the suitors, owe their origin as well as their name to the Roman law, as will be seen by referring to the Code. (Book 3, tit. 3, "*De Pedaneis Judicibus*.")

The Assize of Novel Disseisin plainly shows its Roman origin and its similarity to the interdict *unde vi*. Both applied only to immovables, and Bracton quotes from the digest, which mentions that ejectment from a ship did not give such a remedy. (Dig. 43, 16, 1, 7.)

The Roman remedies differed according to the character of the disseisin, and Bracton has adopted the distinction between armed and unarmed violence, and quotes from the digest to illustrate it.

Even the writ of habeas corpus is to be traced to the interdict "*de homine libero exhibendo*." (Dig. 43, tit. 29.)

This interdict applied to every free person "*sive pubes sit sive impubes, sive masculus, sive fœmina, sive plures, sive sui juris, sive alieni; hoc enim tantum spectamus, an liber sit.*" It required the physical production before the Prætor of the

person detained, so that he might be seen and touched. "*Exhibere est in publicum producere, et videndi tangendique hominis facultatem præbere.*" It was an interdict allowed to everyone, "*Hoc interdictum omnibus competit; nemo enim prohibendus est libertati favere.*" (Id.)

No delay was granted for obedience to this interdict, "*Nec modicum tempus ad eum exhibendum.*" (Id.) It was more effective than the writ *de homine replegiando* described by Blackstone. (3 Black. Com. p. 129.)

It is true this interdict might not reach a person imprisoned by order of the Emperor; such order might paralyze the activity of the court, because the Emperor as chief executive might refuse to execute the mandate of the court. In such case the Prætor did not enter his decree on the records of the court and transmit a copy thereof to the executive, as was done by a Chief Justice of the United States in 1861, because the Emperor had the power to suspend the writ of habeas corpus, if I may be allowed the common law form of expression. The legislative power was vested in him by virtue of the "*lex regia.*" The doctrine "*quod principi placuit legis habet vigorem*" is thus qualified in the Institutes; "*cum lege regia quæ de imperio ejus lata est populus ei et in eum omne suum imperium et potestatem concessit.*" (Inst. lib. 1, tit. 2, 4.)

Omnipotence, similar to that claimed by the British Parliament, was vested in the Emperor by the "*lex regia,*" a statute enacted on the occasion of each accession to the throne, until by long usage the form of legislative action was dispensed with.

The modern doctrine of the limited liability of shipowners, introduced by statute from the maritime law of the middle ages, is traced to its Roman source, the "*noxæ deditio,*" or surrender of the offending thing.

The release from imprisonment for debt, of the insolvent who makes a surrender to his creditors, is traceable to an ordinance of Julius Cæsar. (Mommsen's Rome, vol. iv. 626.) The principle was incorporated into the common law so late as

the reign of George II. At common law, the succession to immovables was intestate, the recognized maxim being, "*solus Deus hæredem facere potest non homo.*" Wills were borrowed from Rome and introduced by statute in the reign of Henry VIII, as to real estate.

Prescription was unknown to the old English law; it was borrowed by Bracton from the civilians.

The prædial servitudes of the Pandects are the basis of the common law doctrine of easements.

The right of representation in cases of succession had no existence in Saxon law; in the time of Glanville, the question as between a grandson and his uncle was still in dispute. The recognition of the right of representation by Bracton is due to the Roman law.

Instead of the Roman universal succession, according to the will of the testator or the legal provisions for intestacy, the common law divided the deceased's property into two portions, the one consisting of immovables the other of movables. For the former, succession was intestate, for the latter it was universal. To that extent the Roman law of universal succession was applied. The executor, or statutory administrator, was invested with the title to all of the movable effects of the deceased; so much so, that even to this day he can sell and dispose of them without the authority of justice, and in truth, he represents the person of the deceased within his sphere.

The English heir was not a universal successor for feudal reasons; and as they have ceased to exist, I do not perceive why the heir in our common law states should not, like the Roman heir, become the universal successor of immovables and movables and represent the entire *persona* of the deceased, both as to his rights and as to his obligations. In such event, the executor in case of testate succession would become a mere agent of the deceased to see to the payment of legacies; and in case of intestate succession, the heir, as representing the person of the deceased, would enter into possession of and control his estate, unless creditors should interpose for the

protection of their interests. In no case would the title to property be vested in the executor or in the administrator, nor could it be sold by either without judicial authority.

The forfeiture of property as the result of crime is part of the Roman system, but Valentinian allowed the property of criminals guilty of capital crimes, with the single exception of treason, to go to their children if they had any. Gratian, still more merciful, gave to the children a share in the property, even of a traitor. (Spence, p. 198.)

It was not until the reign of George II that the common law got rid of the "corruption of blood" and its barbarous consequences.

Criminal trials under the Roman law took place openly before the people; the proconsul presided; throughout each province a certain number of persons selected from the superior classes were annually appointed to perform the office of assessors or judges; the prosecutor as well as the criminal was allowed to challenge any one of the judges so chosen; a written libel or statement was handed in, defining the crime, with time, place and circumstance; if the accused could not procure an advocate, one was assigned to him by the proconsul, except in cases of treason.

The germs of trial by jury are here plainly visible, also the right to a public trial and to be confronted with witnesses.

Blackstone admits, that the oral examination of witnesses was required by the ancient law of Rome, and refers to the rules prescribed by Quintilian for the examination and cross-examination of witnesses *viva voce*, as evidence of the fact. This practice was adhered to as late as the reign of Hadrian. (Dig. lib. 22, tit. 5, 3.)

Trial by jury did not exist in England before the reign of Henry II, and perhaps it will surprise many to learn that a Frenchman claims its origin for France. He says, that in criminal cases France first consecrated the principle, that the accused should be judged by his peers, and that this institution in its imperfect condition was transported to England at

the time of the Norman Conquest. (Morin, Dict. du Droit Criminel, cited in Bacon's Abridgment, Verb. Juries (n).)

This incomplete and disjointed summary of Roman influence on the law of England at least justifies the conclusion, that English law was reduced to order on a Roman framework, and furnished with an extensive Roman terminology, and many of its gaps were filled up with Roman matter.

Thus the common law, with the aid of courts of equity, courts of admiralty and ecclesiastical or probate courts, where Roman principles constituted the basis of jurisprudence and were avowedly applied in the decision of causes, has been able to meet the demands of modern civilization.

The common law as a system of jurisprudence has not been styled "written reason," and perhaps its title to the encomiums so liberally bestowed by its enthusiastic advocates may be questioned; what has endeared it to the English people and their descendants is not the perfection of the system, but its institutions and its political principles evolved from the struggles for ascendancy between absolutism and liberty.

The development of the common law as a system of jurisprudence is analogous to that of the Roman law. Both had their principles of equity to smooth the rough edges of the law, and to adapt its crude rules to the wants of an advancing civilization, the distinct tribunal being one of the principal differences between English Chancery and Roman Prætorian law; both had their "*jus naturale*," which the Romans called "*jus gentium*," as a treasury from which to draw the principles of natural justice, applicable to the wants of a developed society. The only difference between the two in this respect is, that the Romans built up their own "*jus gentium*" from materials furnished by their own philosophers and jurists; the English, on the other hand, found their "*jus gentium*" ready made in the Roman Prætorian law.

The two systems were formed by successive illations; the Prætors, under the rule "*æquitas sequitur legem*," like English chancellors, made law by analogy to the *jus civile*;

the judiciary law of England was the joint product of the judges and the lawyers. There are two elements in the development of law, the one being part of the national life and the other the product of the legal profession. At Rome the law was formed and developed in the national conscience; it was the jurisconsults who formulated it. Pomponius says in the Pandects, "*Constare non potest nisi sit aliquis juris peritus per quem possit quotidie in melius produci.*"

The jurisconsults did not confine themselves to interpretation, they invented, they created. The laws were few in number; the jurisconsults enjoyed boundless liberty, because they were not chained by texts. They often assembled together for discussion, sometimes at the temple of Apollo, hence Juvenal says, "*Jurisque peritus Apollo.*" (Sat. 1, v. 128.) They settled difficult questions, and their conclusions were treated as "*sententiæ receptæ.*"

Their houses were called the perpetual tribunals of the republic. The Roman people selected a house in a frequented street, and gave it to Scipio Nasica, that he might be more accessible. (Dig. 1, 2, 37.) These jurisconsults in fact built the laws, and in so doing they exercised a recognized authority, for of them it was said, "*quibus permissum est leges condere.*" (Gains, 1-7.)

"*Condere*" with "*jura*" is found in Plautus, whose plays belong to the first twenty years of the second century before Christ—

"Qui omnium
Legum atque jurum fietor, conditor, eluet."

(Epidicus, 3, 4, 89-90.)

Cicero also includes them among the sources of the law, for he says, "*Ut si quis jus civile dicet id esse quod in legibus, senatus consultis, rebus judicatis, juris peritorum auctoritate, elictis magistratum, more, æquitate, consistit.*" (Topica, 5.)

The Romans abolished all forms of action, and also the distinction between law and equity; the English in recent times

have done likewise, although Hobbes, in his *Decalogue of the Common Law*, argued for the fusion of law and equity more than two centuries ago.

It is only as legal systems become highly developed, that remedies lose their importance in comparison with rights, and cease to affect them deeply.

The Roman law began by giving all the wife's property to the husband, because she was assumed to be under his power as his daughter. It ended by reserving to her all her property, except the use of the portion settled as a *dos*, to help the husband to pay the expense of the marriage household. The common law began somewhat in a similar way; the English judges early in the seventeenth century declared illegal that part of the ancient Irish law, which permitted a married woman to exercise some power of dealing with her property without the consent of her husband; yet the common law has ended like the Roman law.

The last statute in regard to married women, passed by the English Parliament in 1882, and known as Lord Selborne's act, has entirely obliterated the doctrine of "*eadem caro vir et uxor*." The forefathers had been of Dogberry's opinion, that if two people ride on one horse, one must ride behind, and this principle was applied with much thoroughness to the married state. There does not appear to have been the least doubt which of the two was to ride behind, and the separate existence of the wife was ignored.

The statute has rendered useless much curious learning on the subject of frauds "upon the marital right," and the wife's equity to a settlement, an invention of the chancellor, to save the poor wife a part of her own property.

The theory of the oneness of the household has disappeared, and wives are no longer consolidated in their husbands. Marriage settlements are unnecessary, except upon the Roman principle of a *dos*, to be settled by the wife or her relations on the husband, to enable him to support the household.

All the wife's property is free from the husband's control;

she can sue or be sued as if she were a spinster; this power extends to contracts as well as torts; nor is it needful for the husband to join her in such suits; she may appeal to a British jury in defiance of her husband; she may even turn her attention to him, and proceed against him in a civil action for torts to her separate property, but not for personal wrongs. The phrase, "head of the family" has become one of doubtful meaning. The statute is a big stride toward the emancipation of women.

The disabilities of women were not a part of the tyranny of sex over sex; Sir Henry Maine attributes them to the despotism of groups, or families, over the members composing them. The stringency of this despotism gradually relaxed, and the enfranchisement of women is merely a phase of a process which has affected many other classes, the substitution of individual human beings as units of society.

There is no doubt that common law lawyers are slowly, perhaps unconsciously, becoming accustomed to the same modes of legal thought, and to the same conceptions of legal principle, which characterize the compilations of Justinian, and which have made the Roman law the *lingua franca* of modern Europe; and the two systems will be alike. Every legislative change of the common law in modern times is but an unconscious introduction of some civil law ingredient or conception.

Bentham, by his laborious analysis of legal conceptions, arrived at results which the Roman jurisconsults sixteen hundred years before had assumed to be well established propositions. In this respect, at least, Bentham was not pillaged, although Talleyrand speaks of him as "pillaged by all the world yet always rich;" and Sir Henry Maine says, "I do not know a single law reform effected since Bentham's day which cannot be attributed to his influence."

The Roman law is for the modern jurisconsult what the *chef-d'œuvres* of antiquity are to the artist; it is a masterpiece of foresight, of justice and of composition, and the

elements of this vast structure have been built into the legislation of the civilized world.

What is there then in the origin, the history or the development of the common law which renders its codification impracticable? What the Roman lawyers did in the time of Justinian, we can surely do and more.

Hume says of them, "It is remarkable that in the decline of Roman learning, when the philosophers were universally infected with superstition, and the poets and historians with barbarism, the lawyers, who in other countries are seldom models of science and politeness, were yet able by the constant study and close imitation of their predecessors to maintain the same good sense in their decisions and reasonings, and the same purity in their language and expression." (Hist. of Eng. vol. iii. p. 300.)

Justinian appreciated the task of codification, for he says in his preface addressed to Tribonian, "We have been encouraged by the success of the code to undertake the full and complete revision of the whole law, and to correct and reform the entire Roman jurisprudence, and to compile in one volume all the scattered writings of the jurists; a work which has been considered impossible, and which no one has heretofore dared to undertake; but with uplifted hands, invoking divine assistance, we have entered on this work trusting to God, who enables men to accomplish the most desperate enterprises, to help us by his infinite power to complete it. (§ 2.) And when it is completed, we wish it to be regarded as the temple and sanctuary of Justice." (§ 5.)

He called the proposed compilation, or digests, a code, for he says in the same preface, "*ideo jubemus duobus istis codicibus omnia gubernari, uno constitutionum, altero juris enucleati et in futurum codicem compositi.*" (§ 11.)

In his preface to the Digests, when published as the law of the Empire, he speaks thus of the work which had been accomplished, "One of the most admirable effects of the work which has been done is, that our compilation contains more in

its brevity than can be found in the multiplicity of the ancient laws; for although, heretofore, a great many laws were made, nevertheless very few of them were cited by litigants in support of their causes, either for the want of books, which it was impossible for them to procure, or because of their ignorance; whence it happened that suits were often decided by the arbitrary will of the judge, rather than by the authority of the law." (§ 17.)

Nor was Justinian deceived into the belief that his codes were perfect, for he says, "As divinity alone is perfect, and as human jurisprudence is subject to infinite extension, and cannot be perpetually stationary, but like nature, daily assumes new forms, cases may arise which cannot be decided by the laws which we have compiled; in which event, recourse must be had to the sovereign power." (§ 18.)

The evils which existed in the time of Justinian exist now in states where the common law prevails; those states have their revised statutes, which are a counterpart of the collection of imperial constitutions called the Code of Justinian; but the customary law, or the common law proper, is a law library; it commences with the Year Books and ends with the last report, for the so-called laws of Edward the Confessor, of William I and of Henry I have been shown by modern criticism to be unofficial and informal collections.

The statutory encroachments on the common law, "its myriads of precedents," "its wilderness of single instances," seem to require orderly arrangement and scientific classification, to say the least. But the needs of modern civilization, and the higher conceptions of legal principle which characterize the philosophic spirit of the age, demand a more radical codification, which will efface the patches of centuries that now disfigure the common law, and which will render it more simple, more beautiful and more symmetrical, and bring it more in accord with the jurisprudence of the civilized world.

Mr. John Stuart Mill, in his essay on Bentham, tells how

the common law grew and was formed in the struggle between the feudal aristocracy of conquerors and the conquered effecting their emancipation. The conquered was the growing power, "But was never strong enough to break its bonds through; ever and anon some weak point gave way. Hence the law came to be like the costume of a full-grown man, who had never put off the clothes made for him when he first went to school. Band after band had been burst, and as the rent widened, then without removing anything, except what might drop off of itself, the hole was darned or patches of fresh law were brought from the nearest shop and stuck on."

Those who are most recalcitrant and who manifest the most zeal in opposition to the reformation of the law, imagine that liberty is at stake and that it can only be nurtured in the cradle of their ancestors; they worship the hierarchy of the past, as do those who worship the hierarchy of birth, the memorials of an old glory which has traversed centuries, and which shines only by the power of history; they also forget that Chief Justiciar Glanville as well as Justinian said, "That the pleasure of the Prince is just what constitutes law and has the force of law." (Glanville, Prol.)

In the common law there is an immense mass of scattered but invaluable matter; as a repository of decided cases, Mr. Bentham says, "It affords for the manufactory of real law a stock of materials which is beyond price. All the libraries of Europe would not afford a collection of cases equal in variety, in amplitude, in clearness of statement, in a word, in all points taken together in instructiveness." (Vol. iv. p. 460.)

The need of codifying is growing with this accumulation of cases, and the difficulty increases in proportion to the need; the tacit codification which is constantly going on, and which results from the acceptance of a formula sanctioned by decided cases, does not satisfy the eager demands of an active era. The arranging hand, directed by the logical mind of the codifier, is required to write, in clear, terse and accurate language, what now exists in a confused state, leaving to a more advanced

reformer the task of introducing those elements which codification would develop as necessary to the harmony and completeness of the law.

It is not true that codification will impede the growth of the law.

Justinian in his proemium above referred to, expressly declares that divinity alone is perfect, and therefore human jurisprudence cannot be stationary.

No attainable skill in the preparation of a code can provide for every contingency, nor can it prevent the extension of law by judicial interpretation, but the extension is slow and insensible. No code can immobilize the law or deprive it of the successive improvements which follow the progress of science. But progress is accomplished by a different method; without a code it is the work of lawyers and judges; under a code, it is mainly the work of legislation; the courts and the lawyers cannot innovate—nor can they correct or render the code more perfect; they point out its imperfections, its defects, its gaps; they prepare the progress which the legislator executes. After all the legislature does not create, it only formulates a law, which is a phase of the life of a nation.

A code will diminish what Paley calls the competition of analogies, one inviting the judge to decide the case, and therefore model the new rule analogously to old rule A, and the other to old rule B; this competition is the difficulty which the judge has to surmount by comparison, adjustment and reconciliation of analogies. Such competition will arise less in statute than in judiciary law, still less in the application of a consistent and harmonious code.

The Louisiana code assumes that cases may occur which are not anticipated by it. Article 21 declares that "In all civil matters where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent." Yet the power thus conferred has not been exercised, except for the purpose of

furnishing a remedy or method of procedure. The code has sufficed as a rule for the adjudication of rights.

Although adopted in the year 1824, the Louisiana civil code did not take effect till 1825. What is called the revised code of 1870 is nothing more than the code of 1825 expurgated of its slavery provisions ; it includes, however, amendments made in the interval between 1825 and 1870.

With the exception of three amendments made in the years 1844, 1850 and 1852, the code has remained substantially intact. The most radical change was that introduced in the year 1850, which enabled one of the married couple to give to the other all that he or she might give to a stranger ; prior to that time, if children were born of the marriage, the power of married persons to make gifts to one another was limited to one-tenth of the property of the donor.

In the year 1869 the tacit mortgage system was abolished ; a tacit mortgage was a lien on immovable property created by law in favor of minors and married women ; no registration was required to preserve it and hence it was called "tacit;" the change did not destroy the mortgage but rendered it inoperative as to third persons unless registered and thus made public.

Since 1870, the only serious amendment was that enacted in 1882, respecting donations between spouses in case of second marriage ; prior to that time, a man or woman contracting a second marriage, having children by a former one, could give to the new spouse only the least child's portion in usufruct ; the amendment allows the donation to embrace one-third of the donor's property. No other amendment affecting the legal system of the state has been made, except perhaps one enacted in 1884, which permits forced heirs to annul the simulated contracts of those from whom they inherit ; a right before that time enjoyed by creditors only, or by forced heirs to the extent of their legitime, that is to say, of the share reserved to them by law in the estate of the deceased.

The civil code is regarded in Louisiana as a sacred temple ;

and whenever the sacrilegious hand of the innovater is raised to change it, the attention of the bar and of the bench is at once aroused, and no alteration is permitted without careful scrutiny and thoughtful consideration of its effect on the structure. This is one of the principal effects of a logical code; it cannot be changed in one part without affecting other parts, and the guardians of the sacred deposit are ever on the alert to protect it from desecration.

No one pretends that codification will dispense with the necessity for future legislation; it however sets the law on a solid foundation and casts it into a form, which succeeding legislators will not venture lightly to alter; the completeness of the work secures the inestimable blessing of a legal system so judiciously arranged as to reduce the necessity of future change to a minimum.

The great codes of ancient and modern times were the work of eminent jurists.

Justinian placed at the head of his codification commission the most eloquent and learned lawyer of his day. He allowed Tribonian to select his own associates, some of whom were professors of law in the celebrated schools of Constantinople and Beyritus; others, distinguished advocates who practised in the Prætorian courts; no less than twenty-nine cultivated minds were engaged in the production of the *Corpus Juris*; three on the institutes, sixteen on the Pandects and ten on the code. Justinian has carefully embalmed the names and offices of these men in the proemia to his compilations, and they in turn have as carefully preserved the names of the various Roman jurisconsults from whose writings the Pandects were extracted.

The Pandects are composed, as a piece of mosaic, of fragments taken from thirty-nine of the most illustrious jurisprudents; each fragment bears the name of the author and of the work from which it is taken. But such is the coherency of Pandect law, made in succession by a series of jurisconsults for two centuries, so completely master of the same mode of reasoning, that their successive works apparently belong to one

master mind, so that Leibnitz said, "It was impossible from internal evidence to distinguish them."

Well might Justinian say to the Senate and people of the Roman Empire, that, in giving them his institutes, his code and his Pandects, in exchange for the confused, uncertain and inaccessible law of their ancestors, it was like the exchange between Glaucus and Diomedes in the Iliad of Homer, "Gold for brass—a hecatomb for nine."

The "*Siete Partidas*," projected by Ferdinand III, were completed under his successor, Alfonso the Wise; unfortunately the names of the four jurists who commenced the task in 1256, and finished it in seven years, have not been transmitted to us; the character of their work is the monument to their genius and learning.

The French Code is the idea of the Revolution of 1789, although Louis XI, as Commynes relates, had desired that there should prevail in his kingdom but one custom, one weight and one measure; and that all the customs should be put in one book written in French, to get rid of cunning lawyers.

A decree was adopted in 1790 providing for a general code to be framed in simple and clear language. Provision to the same effect was inserted in the constitutions of 1791 and 1793. But the convention formed the gigantic design of codifying all parts of the law. On August 9, 1793, Cambacères presented in the name of the commission a civil code prepared by himself. This did not satisfy the convention, so they established a commission composed of philosophers who did nothing.

Cambacères presented a new *projet* in 1794. It contained two hundred and ninety-seven articles of general principles. During the discussion of this *projet* the directory came into power. Cambacères prepared a third *projet*, which he submitted to the Council of Five Hundred. Before any discussion could be had a *coup d'état* elevated the First Consul to power.

Then the work of codification really commenced. On 24 Thermidor, year 8, a commission was organized whose members

were Tronchet, President of the Court of Cassation; Bigot-Préameneu, Solicitor-General; Portalis, Advocate-General of the Prize Court; and Maleville, a member of the Court of Cassation. Tronchet was a profound lawyer, Portalis a distinguished jurist and philosopher, Bigot-Préameneu and Maleville were experienced advocates.

The *projet* prepared by this commission was printed by the government; it was submitted to the criticism of the Court of Cassation and the Courts of Appeal, and an invitation was extended to everyone to comment thereon. The First Consul then selected orators to explain it to the Corps Legislatif; it was nevertheless rejected.

On 22 Fructidor, year 10, the work of codification was resumed; the discussion continued for two years. The different titles of the code were presented and adopted as separate laws; when all the parts had become law the government united them in one body under the title of the "French Civil Code."

It was revised when Napoleon became Emperor, in order to make the necessary changes caused by political events, and was republished as the "Code Napoleon."

The Grand Chancellor de Cocceji was charged by Frederick II with the duty of codifying the law of Prussia; he died in 1735. The seven years' war arrested the work till 1780.

A *projet* was then prepared by Dr. Carmer and Dr. Volmar, which was submitted to the savans of Europe and to the Royal Courts. It was not put in force till June 1, 1794, by Frederick William.

This code had an immense result; for the first time in Europe all legal subjects were united in one view.

Maria Theresa in 1753 issued an ordinance to provide for the uniformity of the law in all the provinces of the Austrian Empire. She appointed a commission to digest the existing law; the work of the commission, due to Professor Azzoni, appeared in 1767 in eight volumes, but it was not satisfactory, so she authorized Counselor Harten to construct a code on a different basis.

The conditions she prescribed were:

1. To abstain from doctrinal development.
2. To have in view contestations of the most frequent occurrence.
3. To be clear in expression.
4. To be governed by natural equity rather than the principles of the Roman law.
5. To simplify the laws and to refrain from too much subtlety in details.

The first part of the code was published in 1786 under Joseph II; it was submitted to the universities and the courts of justice, and then put in force July 7, 1810.

There are different opinions concerning the success of the French and Prussian codes; it can be safely affirmed, however, that they were vast improvements upon the then existing condition of the law.

Austin thinks that the absence of definitions in the French code is one of its defects. On the other hand, the Supreme Court of Louisiana says, "That definitions are at best unsafe guides in the administration of justice and their frequent recurrence in the Louisiana code is the greatest defect in that body of laws." (*Egerton vs. Third Municipality*, 1 La. An. 437.)

The opinion almost universally accepted as correct, is, that the primary object of a code should be order rather than reform—a scientifically arranged exposition and re-expression of existing law, clear, simple and free from doctrinal development.

It is believed that under such a code the law will lose its "*inelegantia*," a term used by Gaius to express want of consistency and harmony, and may be made "cognoscible" at least to the legal profession.

The history of codification teaches that the task of preparing a code of laws is difficult, that its proper execution is a work of years, to be entrusted not to a deciduous committee of fugitive legislators, but to a permanent commission of the

most enlightened and cultivated jurists, whose *projet*, prior to adoption, should be subjected to rigid and universal criticism.

If one influential state in the Union should lead the way and achieve even partial success, its example would be imitated by others, and at no distant day the law throughout the Union would become homogeneous, and no congressional legislation would be needed to establish uniformity on particular subjects within the competency of the Federal Government.

On the other hand, a demand would arise for an amendment to the Constitution, so as to adapt the courts of the United States to the administration of justice, under a system in which the distinction between law and equity had lost its significance.

PAPER

READ BY

JOHNSON T. PLATT.

The Opportunity for the Development of Jurisprudence in the United States.

There has never been a time when carefully trained lawyers, mindful of their responsibilities, and willing to meet them, could render a more useful service than at present. Unfortunately, perhaps, for us, we live at a time when every human institution, no matter how venerable, is being examined and brought up for judgment. If it cannot justify its existence it is treated with little reverence. Political power is passing from the hands of those who have hitherto wielded it, and there is some ground for fear that we are about to enter upon a course of rash experiments in legislation from the consequences of which it will take us a long time to recover. At such a juncture there are two classes of persons from whom little of value can be expected—those who see nothing but good in the old, and oppose all change, and those who will not listen to the teachings of experience, but, abandoning what has been won with infinite toil and sacrifice, would re-constitute society anew upon some *a priori* basis. Persons entirely sincere and earnest may be found in each of these classes; they are simply misguided, and do not see facts as they are. There is another class, far larger than it ought to be, composed of persons who believe in nothing except themselves. They are at all times ready to lay hold of and avow and make use of anything that is likely to promote their own selfish interests. Of such of these Lord Bacon said, that they cared not what

became of the ship of estates if so be that they could save themselves in the cock-boat of their own fortunes. We are now passing through a social transformation that will necessitate important changes in the substantive rules of law. Hitherto social movements have not been felt at once in the domain of law, and there has been opportunity for reflection and judgment. Events now succeed each other with such rapidity, and changes are so quickly brought about, that there is less time for deliberation. It is fortunate for society, and of good augury for the future, that there exists a body of men, calm, dispassionate, just and learned, who have "accommodated the teachings of experience to a wise philosophy," and are willing to advise us and able to make themselves heard. It is laid to our charge as a profession that we are too conservative—that we think too much of what is written. It is true that there is no class of men so little likely to cut loose entirely from the teachings of the past as lawyers. The whole course of their professional training serves to impress upon their minds the precepts of

"that great law,
Which makes the past time serve to-day."

It may be admitted that lawyers are conservative—that they endeavor to conserve and keep all that is good in the old. It is also true that the stoutest advocates of better things have come from their ranks, and that as a class they have been foremost in the struggle for the vindication of right against might.

Those who began their legal studies many years ago, and sought for some certain foundation upon which to rest the fabric of law, found themselves in a very perplexing and difficult situation. Law had not been perfectly distinguished from morality, and there had been no adequate analysis of the general conceptions found in the legal systems of all modern progressive communities. High-sounding sentences, in regard to justice and the majesty of the law, and the place of her

seat, were plentiful, but they accomplished little except to inflate the imagination and confuse the judgment.

It is the great merit of the school of analytical jurists that they have taken law as a modern lawyer understands it, marked out its province, defined with some approach to accuracy the general terms of which it makes use, and given valuable hints as to classification and arrangement.

The title of this paper as given in the published programme of the Association is "The Opportunity for the Development of Jurisprudence in the United States." This is somewhat misleading if the word jurisprudence is to be taken in its strict scientific sense, for I propose to touch upon matters pertaining to legislation.

I suppose it is within the experience of every lawyer in considerable practice that there is great dissatisfaction on account of the uncertainty of the law. The very able committee that reported upon this subject last year did not put the case too strongly. Persons who are anxious to come to a knowledge of their legal rights and duties, that they may assert the one and perform the other, cannot do so with sufficient certainty, either by themselves or with the aid of competent counsel. The situation is much to be deplored. The effects are bad from every point of view. That wholesome and salutary reverence for law that should exist in every well-ordered community is weakened. Individuals do not assert their rights when they are violated, and transgressors are not punished. As a final result, the sentiment of justice languishes and decays.

There is little difference of opinion as to our present situation, but much conflict as to how we came to be where we now are, and still more as to how we may escape from the Serbonian bog into which we are plunged.

I do not propose to attempt an exhaustive examination of the causes that have produced the present uncertain condition of the law. To do so would be beyond the scope of my present purpose, and the time at my disposal would not serve for such an undertaking. I wish, however, to hazard some general

observations on the subject by way of introduction to what is to follow. We all admit that during the century now closing the social movement has, in certain directions, received stronger impulses than at any time before of which we have a record. Man's power over the forces of nature has been enormously increased, and is increasing daily with an accelerating ratio. Every new discovery gives an additional vantage-ground to man in his struggle with nature for the mastery of her secrets. Take the one matter of transportation, which has made modern society possible. Greater improvements have been made during the last fifty years than were introduced aforetime during all the centuries that succeeded the going down of Abraham and Sarah into Egypt. I need not stop to mention the changes that the last few years have wrought. The most important have occurred within the memory of persons now present. One of our Connecticut judges was in the country the other day visiting an aged uncle. As they were driving along the highway a train of cars laden with passengers shot across the landscape. Said the judge to his companion, "Uncle John, things are not as they were when we were boys." The response came with a sigh: "No; there is no more rest or peace. Everybody is in a hurry; the world seems to me like a great ant-hill." The resemblance is striking, but would be more complete if the human society was as well ordered in some respects as the other.

As Sir Henry Maine has pointed out, it is essential to progress that means exist for overcoming the natural rigidity of law, and adapting its rules to new social conditions. The required changes can only be made by legislative bodies in the way of direct legislation, and by judicial legislation on the part of the judges. The latter could do but little to narrow the ever-widening gulf between the letter of the law and the demands of society, and in the early part of this century began a period of great and increasing activity on the part of legislative bodies. An enormous number of changes have been made in the substantive rules of law—some good and some

bad, but none indifferent, for if they were not good they were sure to be bad. The function of legislation, of creating general rules of conduct which must be obeyed by the members of a community if they would escape punishment, is certainly a most important one. Not only should the laws of a state be just and equal, but the citizen should have the means of ascertaining his rights, that he may assert them if they are invaded, and it should be possible for him to come to a knowledge of his duties that he may perform them and escape punishment. Here I ask leave to quote from a report made by a special committee to the State Bar Association of Connecticut in January, 1884.

“Statute, as other law, should be stable, certain and accessible or knowable.

“By stable we mean that there should be no unnecessary change in the terms in which it is expressed, unless expediency demands a change in the rule itself. In a progressive community like ours the law must be changed at times to meet new wants and in recognition of new interests, but there should be no change merely for the sake of change. Where no principle is involved it is better that some inconvenience be suffered rather than that a change be made in an established rule.

“It should be as certain as possible, that the citizens of the state may have it in their power to ascertain their rights and duties. People are held to the consequences of a violation of legal duty whether they know their conduct is unlawful or not. No other rule seems to be practicable; but it savors of harshness to punish a man, civilly or criminally, for not obeying a law expressed in such a form that he could not by the aid of the best legal advice ascertain what it prescribes.

“It should be accessible or knowable, that the citizens of the state may, with the least difficulty, ascertain their rights and duties. As they are presumed to know the law, and are under a duty to obey its commands, it should be so expressed

and arranged that they can come to a knowledge of its precepts.

“The statute law is capable of being made—and ought to be made—the most certain department of the law. We think we are justified in saying that in this State it is the most uncertain.”

Now, what are the facts? There is no function or duty affecting the public that is so carelessly and inadequately performed as that of law-making. I do not, of course, mean to be understood as saying that there is conscious neglect of duty on the part of members of legislative bodies; the trouble comes from a failure on their part to understand and appreciate the weighty consequences of their acts. The average legislator, being generally a man of sense and discernment, can understand and give expression to the wishes of his constituents as to a proposed change in the law. The effecting of that change, by means of written words, and in a proper manner, is in general beyond his power. It involves a degree of technical knowledge and skill which the average lawyer even does not possess. There are, in reality, two functions in legislation which are quite distinct. The one, that of the legislator proper, ascertains what changes ought to be made in the existing law, and when a bill has been prepared that will effect the desired change gives it the stamp of legislative approval and makes it law. The other, or technical part of legislation, is infinitely more difficult and requires a high degree of skill and learning. The draughtsman must know the rules of the common and statute law applicable to the subject matter of the proposed bill, be able to bring before his mental vision the various combinations of fact likely to occur and calling for the application of the proposed rule, have a competent knowledge of the use of words and a thorough understanding of the whole matter of judicial interpretation. The draughtsman is an instrument made use of by the legislator proper, and it is no abdication of the appropriate functions of the latter if he avails himself of such service. From a bare

statement of the facts one would suppose that every legislative body would hasten to employ a competent person or body of persons for this work. So far as I know there is no state in the union where it is done. The result is, that we have a large and increasing mass of statute law, which no one can understand. Much of it is framed to meet particular cases, and amendments are made from year to year, until finally there comes to be an adequate expression of a general rule. A large number of amendments and alterations seem to have no motive except a passion for change. Much of the legislation that annually afflicts a suffering community is trivial and evanescent. Its history is a brief experience and a swift repeal. A good deal of the statute law fails altogether to accomplish the purposes intended by its authors. It remains upon the statute book a monument to ignorance. Sometimes the effects of a statute far exceed what was intended by its framers. As is said in Bacon's Abridgement, "A statute can do no wrong; but it may do some things which seem very strange." In most of the states a practice prevails of re-casting the statute law every few years for the purpose of reducing its bulk, or putting it in more manageable shape. As generally practised this process creates still further confusion. The language of statutes that have received a judicial construction is changed, and, until they have been again construed by the court of last resort, no one can tell whether a change has been made in the rules of law or not. The New York Code of Civil Procedure, so far as an outside lawyer can understand it, seems to afford an illustration of the confusion and uncertainty that can be introduced by re-casting the statute law, as well as an example of about everything that a code of procedure ought not to be.

We are fortunate in having present with us at this meeting of the Association the very able, learned and distinguished jurist to whom the English-speaking race is indebted for one of the greatest reforms in the history of its law. This reform was so consonant to reason, and of such practical use and

benefit in the administration of justice, that it has been adopted in its principles and many of its details by a large majority of our own states and by England. Not content with achieving the highest professional eminence, Mr. Field has given a long life of unwearied service to the amelioration of the law, and his name is known and honored in every country where there is a settled administration of justice. And yet, owing to the passion for change without regard to improvement, he will now have to look to other states than his own, yes, to other nations, for the best examples of the beneficent reform that he introduced.

In my judgment the undue activity of legislative bodies, and the carelessness and ignorance exhibited in framing statutes, are the principal causes of the uncertainty of the law. With the rapid changes that society is undergoing much legislation is needed; but we have a great deal that is not needed, and which is worse than useless. The public is coming to understand the situation, and the demand for biennial sessions is in some sort a protest against excessive and reckless legislation. The common law has been compared to a regularly laid out city, and statute law to steam railroads cutting through it in every direction, regardless of symmetry or arrangement. Lord Bacon compared the law of his day to a building of many pieces, patched up from time to time according to occasions, without frame or model. Professor Holland, in describing the condition of English law, says, "Statutes and reports alike have accumulated, layer above layer, in a merely chronological order; so that a given legal topic resembles, not the plan of a well-defined field, but rather the vertical section of a geological formation. The most skillful juris-consult, when asked to exhibit any particular rule of law, can do so only after first laboriously examining all the legal strata in which any traces of it are to be found, and then piecing together from the fragments thus collected what after all he can only present as a probable reconstruction of the required entity."

The uncertainty is greatly increased in this country by reason of our having, as regards most matters, as many separate systems of law as we have states. With modern methods of communication a state line signifies little so far as business is concerned. A manufacturer in New England or a merchant in New York may sell goods to persons residing in thirty different states. The rights arising out of these contracts of sale may differ in the several states, and if all the purchasers should become insolvent, their estates would be settled and the assets distributed in thirty different modes. Again, we have long consolidated lines of railway traversing several states, and subject to as many different systems of rights and duties as there are states traversed. This involves trouble and expense to all concerned, and makes the assertion of a right against a railway often a matter of difficulty and uncertainty. That the exigencies of modern business will soon compel Congress to exercise in its fulness its power under the constitution to enact laws for the regulation of commerce between the several states, cannot, I think, admit of question. It is also, I think, probable that in the near future legislation upon matters now exclusively within state control will be committed to Congress.

To remove the existing uncertainty of the law, it is proposed by some to re-cast it and give it the form of a statute. Some deny the possibility of doing this as regards some branches of the law, while others, conceding the possibility of reducing the whole of the law to the form of a code, deny its utility. Another class admit the possibility and utility of codification in the abstract, and believe that our law will eventually assume that form. Nevertheless, they are of the opinion that general codification at the present time would be ill-advised, and more likely to increase than remove the evil of uncertainty. I agree with those who entertain these views. I do not believe that the time has arrived when we can, to the best advantage, or with much hope of benefit, put the whole law into statutory form.

It may be admitted at once that it would be a great boon if the law now in force which creates our legal rights and duties could be expressed in the form of general rules with fulness and accuracy, and conveniently classified and arranged. But to do this well and adequately would be an undertaking of the greatest difficulty. If done in any other manner, the confusion and uncertainty would be infinitely greater than at present.

Much as codification has been considered and discussed, there are many questions relating to it still unsettled, and upon which there is no agreement, even among its professed advocates.

What is the best classification and arrangement for a code? Will not the statement of some parts of the law in the form of brief general propositions breed more uncertainty than afflicts us at present? Would not the putting of the law in statutory form, where, as in this country, the importance of careful and judicious legislation is but imperfectly understood, greatly increase the tendency to frequent and unnecessary changes in the rules of law? Should a draft code contain simply a statement of the existing rules of law, or be accompanied by suggestions for their improvement and amendment? What would be the effect of codification upon the tendency now apparent to bring the laws of the several states upon many important topics into conformity? Is the proposed code to embrace the whole of the law, both statutory and common, or only the statute law and so much of the common law as the draughtsman finds it convenient to express in the form of general rules? If the latter course is pursued the code would be but an imperfect expression of the law, and a provision would be necessary like that contained in the Act of Parliament (of 1882) to codify the laws relating to bills of exchange, cheques and promissory notes, and which is as follows: "The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this act,

shall continue to apply to bills of exchange, promissory notes and cheques."

These and other questions suggest themselves to one who has studied and reflected upon the problem of how we may best amend the form of our law. These questions are not trivial, nor do they relate to matters of speculation having no practical consequences. Upon the answer given to some of them the success or failure of a code would depend.

I do not intend to discuss or even examine the points covered by these queries; but I want to throw out two or three general observations for the purpose of drawing your attention anew to the importance of a thorough and adequate discussion of this matter. Take the mode in which the rules of law are to be expressed in the code. Shall they be contained in brief, general propositions, which look very simple to the untrained, but in fact are very hard to understand and apply to a particular state of facts? Would not such a form, considering the habits and training of our bench and bar, throw upon the judges a burden of interpretative work under which the whole judicial system would break down? Again, with this form, classification becomes of the utmost importance, for every proposition or rule should be deducible from a more general rule that precedes it in the order of arrangement. Mr. Coode, in his work on *Legislative Expression*, has some remarks so true and apposite that I wish to quote them:

"The perfection of legislation is attained in proportion as every variety of right, and every corresponding obligation and liability, are most specifically determined, and when the least is left to inference from extensive and remote generalities. It is true, in regard to law, as in regard to all other things, that a simple general rule is most easily comprehended by those who have no practical acquaintance with the particulars included by it; and this fact is also of practical importance in legislation. But to those who do know the particulars experimentally, as each man knows his own case, the more general the terms of a rule the less certain and close does its application

appear ; the more specific the terms of a rule, the more easily and precisely is its application seen and understood."

The law is or ought to be common sense, and it is made for common people as well as the learned. It follows that as regards expression and arrangement convenience and certainty should never be sacrificed to supposed perfection of form.

I have spoken of the existing condition of the law as regards its form and the need of improvement, have declared my belief in the possibility and utility of codification, and at the same time have stated some of the difficulties in the way of general codification at the present time.

I ought, perhaps, to say here that in my opinion certain branches of the law may now safely and properly be reduced to the form of a code. This is especially true of the criminal law and the law relating to commercial transactions. It is when we touch that portion of the law that creates the rights *in rem* which a man has in respect to his person and to things that the greatest difficulties are met with.

A few words now as to the opportunity for the improvement of our law. Its special feature is the immense mass of illustrative material that it contains. Principles laid down perhaps centuries ago have been worked out in great detail, and we have a complete record of the process. There are many conflicting opinions to be sure, but they are of aid in extracting the true and just rule. This mass of material, although growing rapidly in bulk, is growing more accessible every day. Digests, indexes and tables of cases make it possible in a very short time to trace the development of a principle from its first statement to its latest application. The publication of the series called the American Decisions is an important event in the history of our law. It gives to the student and lawyer at moderate cost the command of immense resources. The same is true in a somewhat less degree of the other series called the American Reports. A good many text-books are published each year, some good, but too many of no value except as they give a clew to the cases. We are beginning to feel the effects

of the application of the scientific method to the study of legal institutions. In the domain of comparative law most important results have been attained. The analytical jurists have put into our hands instruments of precision that guide us safely through the mists of uncertainty and the meaningless generalities that so beset us.

The opportunity of the scientific jurist with an enthusiasm for law has come. He can thread his way through the "wilderness of single instances," and give us the result of his labors in the form of treatises upon the different branches of the law. Not until the whole field of the law has been thoroughly worked over by private jurists, nor until juster ideas prevail in regard to legislation, will it, in my judgment, be expedient to attempt to reduce the whole of the law to the form of a statute.



PAPER
PRESENTED BY
WILLIAM P. WELLS.

The Dartmouth College Case and Private Corporations.

Chancellor Kent, writing in 1826, thus expressed himself concerning the Dartmouth College case: * “It contains one of the most full and elaborate expositions of the constitutional sanctity of contracts to be met with in any of the reports. The decision in that case did more than any other single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the grant of government and to give solidity and inviolability to the literary, charitable, religious and commercial institutions of our country.”

Another learned commentator, Mr. Justice Cooley, writing nearly fifty years later, adds to his statement of the doctrine established in that case the following: † “It is under the protection of the decision in the Dartmouth College case that the most enormous and threatening powers in our country have been created, some of the great and wealthy corporations having greater influence in the country at large and upon the legislation of the country than the states to which they owe their corporate existence. Every privilege granted or right conferred, no matter by what means or on what pretence, being made inviolable by the constitution, the government is

* 1 Kent's Comm. 419.

† Cooley's Const. Lim., 279-80, n.

frequently found stripped of its authority in very important particulars by unwise, careless or corrupt legislation, and a clause in the federal constitution, whose purpose was to preclude the repudiation of debts and just contracts, protects and perpetuates the evil."

During the period which has elapsed since Chancellor Kent wrote, the great development of private corporations has taken place in this country, their wealth and strength have immensely increased, and they have become possessed, unquestionably, of vast and dangerous powers. And these contrasted statements of the effects of this decision present a most interesting inquiry. The first represents an opinion which prevailed in the profession and in the courts long after the decision was made, and which still receives strong support from the bar and from the decisions of the highest tribunals. But it must be acknowledged that the second of the foregoing statements is only a moderate expression of professional and public opinion upon this important subject. While, on the one hand, it is maintained that the original adjudication was not only right in itself, but has been rightly affirmed and applied in succeeding cases and should not be disturbed; that the court which originally pronounced it should not and will not take any backward steps in respect to the doctrine established; on the other hand, not only has the correctness of the decision been repeatedly challenged, but a swelling chorus of denunciation, proceeding from lawyers and the press and the people, assails it as *fons et origo* of monstrous wrong and pernicious consequences, and predictions manifold are not wanting that it must sooner or later be reviewed and reversed. It cannot, therefore, be inappropriate for an association of the bar of the country to consider whether the effect of this great judgment has been beneficent or evil; whether alleged abuses of corporate powers and alleged corporate encroachments upon public rights, which are at present engaging the solicitude of lawyers, legislators and the people alike, are chiefly attributable to or find support in the decision; whether corporations

find in the courts under it an "impregnable barrier" behind which they may do mischief, or only a just shelter for their clear rights; whether the judicial tribunals have only justly applied a clause of the federal constitution, or have pressed the decision too far, with evil consequences to the people. Such consideration, in other words, involves an inquiry into the connection, real or supposed, between the Dartmouth College case and the pressing questions of corporate power; responsibility and restraint which are now the subjects of great public anxiety. But the appropriate limits of the discussion only allow a suggestive rather than a thorough treatment of the topic.

The inquiry first requires a brief consideration of the doctrine established and its applications. But it is unnecessary to examine at any length the cases in the federal and state courts in which the principle of the leading case has been applied, for this would be only a repetition of familiar learning. It will be sufficient to notice the well-known rules flowing from the original decision, which have been administered for the protection of private business corporations. It will appear that the decisions, during a period of sixty-five years, have affirmed a body of legal rules, as applications of the doctrine of the leading case, which, to say the least, constitute a strong and valuable support of corporate privileges.

A strict statement of the decision in the principal case,* in 1819, is, that the charters of private corporations are contracts between the legislature and the corporations, having for their consideration the liabilities and duties which the corporations assume by accepting them, and the grant of the franchise can no more be resumed by the legislature, or its benefits diminished or impaired, without the consent of the grantees, than any other grant of property or valuable thing, unless the right to do so is reserved in the charter itself.

* The Dartmouth College Case, 4 Wheaton, 518.

This principle, in subsequent cases, was held to embrace all contracts, executed and executory, between the state and private corporations;* and it was also settled that the invalidity of legislation impairing the contract does not depend upon the extent of the impairment.†

I. Let us consider, at the outset, the beneficial results to corporations of the Dartmouth College case. It was inevitable, when such a decision had been announced by the supreme tribunal of the federal government, that corporations would at once perceive its value to them, and be swift to seize upon the advantages it conferred upon them. A mere glance at the familiar classes of cases in which the principle has been applied, shows their variety and importance, and that business corporations have never failed to invoke its protection whenever their chartered rights have been drawn into controversy.

(1) In respect to the title to corporate property, derived from the state, other than franchises, it was soon established, by many decisions, that legislative grants to corporations vest an absolute title, which could not be afterwards resumed or controlled by the legislature, any more than an absolute grant to individuals. It having been previously decided that legislative grants are irrevocable,‡ the decision that a charter is a contract, brought all property granted by a charter within the protection given to grants to individuals. The value of such a principle to private business corporations is at once apparent. It is only necessary to refer to the history of state and federal legislation, which has conferred upon them profuse grants of property, to show how beneficial to corporations the administration of this rule of law has been. The disposition to

**Green vs. Biddle*, 8 Wheat. 1; *Bridge Proprietors vs. Hoboken*, 1 Wall. 116.

†*Planters' Bank vs. Sharp*, 6 How. 327; *Bronson vs. Kinzie*, 1 How. 311.

‡*Fletcher vs. Peck*, 6 Cranch, 87; *Terrett vs. Taylor*, 9 Cranch, 43; *Town of Pawlet vs. Clark*, *Ibid.* 292; *Davis vs. Gray*, 16 Wall. 203.

encourage corporate organization and effort, which was especially indulged in the early history of the country, has been wrought upon by corporations ever since with unflagging energy and persistence. The public funds, the public domain, seem to have been regarded as theirs by right, and state and federal legislatures, influenced by all manner of solicitation and importunity, and won by all the arts of conciliation and persuasion, have enriched corporations by abundant and overflowing donations, and thus established and strengthened the solid structure of their wealth and power.

(2) The same principle, by repeated adjudications, was held to apply to grants of the franchises of corporations. They were held to be property, and irrevocable by legislation, after acceptance by the corporations, on the terms of the charters. Great as have been the value and benefits of the large grants of property made to corporations, these are small compared with the worth of franchises which, once obtained, bestow special and ample powers for the acquisition of property, its consolidation in the hands of corporations, and afford to them the ability and present the strong temptation to act solely for their own aggrandizement, in disregard of the public interest. In the early history of corporations in this country all charters were special, each resting upon its own terms, and granting varied privileges, always specially valuable. The development of the country and its resources justified the liberal encouragement of corporate enterprises, and the grants and franchises conferred by charters were given upon sound considerations of public policy and benefit to the country. But all business corporations, by the subsequent application to them of the decision in the principal case, gained enormous power, and secured a firm foothold for action which inevitably resulted in aggressions upon the public.

If it be said, as must be conceded, that the inviolability of grants to corporations, other than franchises, confers upon them no rights beyond those given by grants to natural

persons, upon sufficient consideration, and rests upon principles of justice and morality applicable alike to natural and artificial persons, it may be replied that the chief advantage which has been derived by corporations from the Dartmouth College decision is the removal of their franchises from legislative control, the constant exercise of which is essential to the public welfare. By the bestowal of such franchises there are conferred upon corporate and associated capital powers which individuals cannot have, powers for good certainly, but also powers for evil, which have been exercised to such public detriment that the people have been stirred to their depths by a sense of the immediate and urgent necessity of finding, under the law and through the judicial tribunals, or above and outside of them, some effectual means of restraint upon corporate abuses.

(3) In respect to the use and enjoyment of corporate property and franchises, it must be admitted that the principal decision has been the source of the same priceless advantages to corporations. The special charters which were granted under the influence of the sentiment favorable to corporations, which prevailed alike in legislatures and in courts, generally included special privileges in the use of corporate franchises and the carrying on of corporate business. When secured, these are irrevocable. Corporations thereby become possessed of the power to determine, without restriction and without legislative control, the compensation they shall receive for services, the profits from the use of their property, "its use and the fruits of that use." In innumerable cases, in the state and federal courts, the special provisions of charters to this end have been held to be beyond legislative interference under the principle of the Dartmouth College decision. The benefits thereby secured to corporations need no description. The advantages are obvious which they have derived from the principle that the right to regulate and fix their own compensation for services results from their general power to carry on

the business for which they are organized, and that such compensation must be determined by the corporate body itself. The authorities to this effect were uniform* until the comparatively recent decisions of the Supreme Court as to the regulation of corporate business, which will be considered hereafter.

It is against this right and this power of corporations to determine their own charges, and the undeniable abuses thereof, that the public sentiment referred to has been especially directed, and which, not yet wholly allayed, though diminished, has, unintelligently perhaps, found in the leading case the sole source of corporate injuries to the public.

(4) The exemption of private corporations from taxation altogether and taxation at special and favorable rates, under charter provisions, have been of such advantage to them that, more than any other of their privileges, perhaps, these have encountered the disapproval and opposition of the people and the profession; and the established rules of law protecting such exemptions have challenged, probably, more severe criticism than any application of the Dartmouth College decision. The principle that the legislature may make an irrevocable contract of exemption from taxation does not rest in its origin upon that decision. It found its earliest assertion in the case of *New Jersey vs. Wilson*, † in 1812, and the succeeding cases which affirm the rule profess to rest upon that case.‡ The decision was, that under the constitution the repeal of a law granting total or partial exemption from

* *Penn. R. R. Co. vs. Sly*, 65 Penn. St. 205; *Phil., Wilm. & Balt. R. R. Co. vs. Bowers*, 4 *Houst.* 506; *Hamilton vs. Kutte*, 5 *Bush*, (Ky.) 458.

† 7 *Cranch*, 164.

‡ *Gordon vs. Appeal Tax Court*, 3 *How.* 133; *Piqua Bank vs. Knoop*, 16 *How.* 369; *Ohio Life and Trust Co. vs. Debolt*, 16 *How.* 416; *Dodge vs. Woolsey*, 18 *How.* 331; *Mech. and Traders Bank vs. Thomas*, 18 *How.* 384; *McGee vs. Mathis*, 4 *Wall.* 143; *Jefferson Bank vs. Skelly*, 1 *Black*, 436; *Home of the Friendless vs. Rouse*, 8 *Wall.* 438; *Wilmington Railroad vs. Reid*, 13 *Wall.* 264; *Farrington vs. Tennessee*, 95 *U. S.* 679; *Murray vs. Charleston*, 96 *U. S.* 432.

taxation impairs the contract made by the grant of the privilege. Whether or not it was rightly decided that the prohibition of the constitution applied to the exemption in question in the case, it has remained as the basis of subsequent decisions and has been repeatedly affirmed by the Supreme Court, though not without most strenuous dissent by a strong minority of the court. But it is by virtue of the decision in the Dartmouth College case that the principle has its application to private corporations. The decision that a charter is a contract made available to them the doctrine that contracts of exemption from taxation are protected by the constitution, notwithstanding that the states are, by such contracts, deprived of the exercise of one of the powers of sovereignty. And the majority of the cases in which the principle established in *New Jersey vs. Wilson* has been affirmed have been cases where corporate charters providing for exemption from taxation have been drawn in question. In one of these cases it is said that "attempted state taxation is the mode most frequently adopted to affect contracts contrary to the constitutional inhibition. It most frequently calls for the exercise of our supervisory power."*

And this supervisory power the court has steadily exercised to declare void all state legislation impairing contracts of exemption made with corporations in their charters. Notwithstanding the earnest opposition and protests of the minority of the court, at all times, the majority has not failed to protect the contract of exemption when the provisions of the charter clearly expressed it. And one of the minority has not hesitated to say that the court has been "at times quick to discover a contract, that it might be protected, and slow to perceive that what are claimed to be contracts were not so, by reason of the want of authority in those who profess to bind others. This has been especially apparent in regard to contracts made by legislatures of states, and by those municipal

* *Murray vs. Charleston*, 96 U. S. 432.

bodies to whom, in a limited measure, some part of the legislative function has been confided."*

It is believed to be the general opinion of the profession that if the question whether a state legislature can release the sovereign power of taxation were *res integra*, it would be decided in the negative by every judicial tribunal, state and federal. Discriminations in respect to taxation, favorable to corporations, originally granted in conformity with the public sentiment, which, as has been said, encouraged them by favoring legislation, are now seen to be unwise and unnecessary. The time when corporations need such support or encouragement long ago passed away. The public, which once looked with favor upon their privileges, is now alarmed by their encroachments, and the profession and the public alike realize the consequences of the doctrine, that under the decision of the Dartmouth College case the essential sovereign powers of a state relating to revenue, which ought to be most sacredly guarded and conserved, may be bartered away in favor of corporations, whose influence upon legislation has been almost irresistible, and whose privileges have been often secured by the exercise of "the sly and stealthy arts to which state legislatures are exposed, and the greedy appetites of adventurers for monopolies and immunities from the state right of government."† If the Dartmouth College case had

* Miller, J., in *Washington University vs. Rouse*, 8 Wall. 442.

† Since the above was written, the decision in *Given vs. Wright*, 117 U. S. 648, has been announced, affirming anew the case of *New Jersey vs. Wilson*, and bringing to notice the singular fact, that the exemption sustained in that case, originally granted to the Delaware Indians, which passed to the purchasers of their lands, was not insisted upon by the holders of the lands, and taxes were paid for the whole period of about sixty years since the original decision. *Given vs. Wright* decides that the long acquiescence of the land-owners under the imposition of taxes, raised a presumption that the exemption which once existed had been surrendered, as it was a franchise or privilege which could be lost by acquiescence. The court expresses the opinion that if the question in *New Jersey vs. Wilson* were a new one, it might be differently decided.

been nothing more to corporations than the basis of their protection against taxation, it would have deserved, even then, as the principle has been actually applied, the protests found in the dissenting opinions of the judges, the criticism of the profession and the complaints of the people.

II. Here, then, we have the established principles, resting upon the Dartmouth College case, under which corporations have complete protection for their corporate rights and franchises, the title and use of corporate property, immunities and exemptions in respect to taxation, safety from any alteration or impairment of the rights and the proprietary condition secured by their charters. These are the direct results of that decision. But it is also the foundation upon which private business corporations in this country are grounded, for injurious as well as beneficent purposes. Under it they have found a position from which they are enabled to deliver the heavy fire, and carry on the noxious warfare, of corporate abuses and injustice. It is the shelter under which the vast capital embarked in corporate business may be employed not only in serving the people but in oppressing them. The connection between this state of things and the decision may be traced by the simple inquiry, what would have been the condition of private corporations if the decision had not been made? The answer is, that they would have remained subject to complete legislative supervision and control. If this is desirable it would seem that it can only be brought about now by retracing the path in which the Dartmouth College case was the first step. Whether it is desirable or not there is a difference of opinion; whether it is likely to be accomplished is still more doubtful. But that the decision, strong and fixed in our jurisprudence by repeated affirmations, venerable and by many regarded with a veneration which stigmatizes as profane any criticism of its principles, stands, until explicitly reversed, in the way of the complete legislative restraint of corporations, is certain.

It is indisputable, therefore, that the beneficial results of the decision to private corporations have been inestimable. It has secured to them, beyond recall, enormous privileges and powers. It is the corner-stone of a structure of corporate wealth and influence, which has been broadening and rising higher with every succeeding year. It has encouraged them in independence of the legislative and popular will, and offers to them a constant temptation to wield their vast resources solely for their own aggrandizement. It forbids legislation, however desirable, which is often essential to the public welfare. All this may be fairly said without partaking of a spirit of unreasoning hostility to corporations. The criticism of the original decision which asserts that it has been the source of such priceless benefits to corporations is rational and just. No judicial mind could have anticipated, at the time of the decision, the extent of subsequent applications of a principle declared in the case of a college to business corporations, any more than the extensive and varied growth of corporations could have been foreseen. But, from the beginning, the application of the rule to the charters of business corporations has been asserted and defended as necessary to stimulate corporate enterprise and investments.* However this may have been, it is certain that there is some foundation for professional and public opinion that the principle of the leading case has been pressed too far in the courts; that not only has reasonable encouragement been afforded to corporate exertion, but that it has emboldened corporations in independence, in invasions of public right and in abuses of their lawful powers.

III. The larger part of professional and lay criticism upon the Dartmouth College case and its results has been directed against the Supreme Court, asserting that the principle has been pressed too far, to the advantage of corporations and the protection of vested interests; that it has "been made to

* The Binghamton Bridge, 3 Wall. 74.

sustain grants which neither law nor justice nor sound principle can sanction;" that "the rule in that case has been perverted to the maintenance of corporate institutions invested with great public functions."* This is apart from the question of the soundness of the original decision, which has been repeatedly challenged and discussed with great research and ability,† but which is not within the purpose of this paper. In estimating the force and justice of such animadversions, it is necessary to consider the principal case and the later decisions founded upon it, and the course of decision in the Supreme Court alone, regarded as a body or system of legal doctrine. Of this the constituents are:

(1) The principle that the charter of a private corporation is a contract. The court has firmly and steadily applied this principle in cases of business corporations, and whenever the contract has been found in the charter it has been protected from impairment or violation, and legislation to that effect has been held invalid. Thus business corporations have been secured in the possession and enjoyment of every privilege, exemption and benefit clearly conferred by charters; in the irrevocable title to property and franchises granted; in the exclusion of competing corporate enterprises and works; in freedom from increased public burdens; in the right to the use and enjoyment of their property and franchises; in immunity from legislative control.‡ And the court has never

* See, as representative of such criticism, a very interesting and able address by Hon. John A. Jameson, of Chicago, before the Illinois State Bar Association, January 6, 1882, upon "Interference by Law with the Accumulation and Use of Capital."

† See especially "The Dartmouth College Case," vol. viii., *American Law Review*, p. 189, January, 1874, and Mr. Shirley's volume, "The Dartmouth College Causes and the Supreme Court of the United States," St. Louis, 1879.

‡ *Planters' Bank vs. Sharp*, 6 How. 301; *Trustees of Vincennes Univ. vs. Indiana*, 14 How. 268; *The Binghamton Bridge*, 3 Wall. 73; *Davis vs. Gray*, 16 Wall. 203; *New Jersey vs. Yard*, 95 U. S. 104; *New Orleans Gas and Water Cases*, 115 U. S. 650; and the whole series of taxation cases, cited *supra*.

failed to declare its adherence to the principal case and the improbability of its reversal in the most explicit terms, thus, "The principles they maintain are now axiomatic in American jurisprudence."* Again, "The question decided in that [the Dartmouth College] case has since been considered as finally settled in the jurisprudence of the entire country. Murmurs of doubt and dissatisfaction are occasionally heard, but there has been no re-argument here and none has been asked for."† And again, it is said that the courts "are estopped from questioning the doctrine."‡ Again, "The doctrines * * announced by this court more than sixty years ago have become so imbedded in the jurisprudence of the United States as to make them to all intents and purposes a part of the constitution itself."§

The legal profession will not readily unite in support of a demand, however urgently it may be pressed by popular opinion, that the Supreme Court shall reverse the original decision. Every sanction which establishes the maxim, *stare decisis*, forbids this. It was made upon the greatest deliberation. The authority of the greatest names in our judicial annals supports it. Their successors, through a period of more than sixty-five years, have affirmed and followed it. Whether right or wrong, it is now too late to overthrow it. Vested interests and rights, the investments of millions, great and beneficent works and enterprises depend upon its permanence. The language of Mr. Justice Davis is not too strong when he says that || "the security of property rests upon it, and every successful enterprise is undertaken in the unshaken belief that it will never be forsaken. A departure from it *now* would involve dangers to society not to be foreseen, would shock the sense of justice of the country, and weaken if not destroy

* Von Hoffman *vs.* Quincy, 4 Wall. 535.

† Farrington *vs.* Tennessee, 95 U. S. 685.

‡ The Binghamton Bridge, 3 Wall. 73.

§ Stone *vs.* Mississippi, 101 U. S. 816.

|| The Binghamton Bridge, 3 Wall. 73.

that respect which has always been felt for the judicial department of the government." It is often said that every persistent popular demand finally obtains what it desires, even from the judicial tribunals. But there is little ground for the expectation that this case will be reversed under any conceivable pressure of public sentiment. It will continue to be the subject of adverse criticism, which will be intensified and strengthened, in the profession and outside of it, unless corporate abuses are restrained or come to an end. But the remedies for these, it is believed, will be found in some other way than in the reversal, by the court itself, of this memorable judgment.

(2) Although the leading case has thus been repeatedly affirmed and declared to be unassailable, we find it qualified and limited by important adjudications which have established principles operating in a high degree to confine and lessen its effect in encouraging the independence and aggressions of corporations. When it became settled that grants to them were not to be extended by construction, and that all charters were to be construed strictly against the grantees,* whatever criticism may be made upon the doctrine or its consistency with the Dartmouth College case, it is certain that a check was thereby laid upon the effect of the principal decision. And the rule established in the Charles River Bridge case has been repeatedly affirmed and stands as firmly as the rule that a charter is a contract. This principle has been steadily applied where corporations have invoked the protection of the constitutional inhibition, under charters which contained no clear contract, and in administering the rule the Supreme Court has denied the claims of many corporations to the exclusive privileges, beneficial exemptions and valuable grants

* *Charles River Bridge vs. Warren Bridge*, 11 Pet. 420; *Richmond R. R. Co. vs. Louisa R. R. Co.*, 13 How. 71; *Perrine vs. Canal Co.*, 9 How. 172; *Turnpike Co. vs. State*, 3 Wall. 210; *Ruggles vs. Illinois*, 108 U. S. 526.

asserted under charters. Under this principle corporations have been apprised that the securing of a loosely-drawn charter was not enough to confer upon them all the rights and privileges expected, that charters convey nothing by implication,* and that they are always subject to the scrutiny of the judicial power, under a rule of strict construction. The effect of such adjudications upon charter legislation has undoubtedly been beneficial. It has made legislatures aware that if it was intended to confer an irrevocable franchise, privilege or exemption, that purpose must be clearly expressed. Many a legislature, brought face to face with an explicit charter-contract, would hesitate to enact it, while a skillfully drawn charter, intended by its promoters to contain but not express a contract, might pass unchallenged. Thus, this important rule of the construction of charters, in its actual application, has been favorable to the public as against corporations.

(3) The Supreme Court has asserted and upheld the legislative authority over corporations in all cases where their charters, or the general laws, or the provisions of state

* Especially in the taxation cases the court has held that the contract must be clearly expressed in the charter. *Providence Bank vs. Billings*, 4 Pet. 514; *Salt Co. vs. East Saginaw*, 13 Wall. 373; *The Delaware R. R. Tax Cases*, 18 Wall. 225; *Tucker vs. Ferguson*, 22 Wall. 527; *New Jersey vs. Yard*, 95 U. S. 104; *Hoge vs. R. R. Co.*, 99 U. S. 343; *Railway Co. vs. Philadelphia*, 101 U. S. 539; *Memphis Gas Light Co. vs. Shelby Tax District*, 109 U. S. 398; *Southwest R. R. Co. vs. Wright*, 116 U. S. 231; *Vicksburg, etc., R. R. Co. vs. Dennis*, 116 U. S. 668; *Tennessee vs. Whitworth*, 117 U. S. 139-148. And the privilege of exemption from taxation is construed to be the special privilege of the corporation to which it is granted, and does not pass to its successor unless the law granting the exemption expresses a clear intent to that effect. *Morgan vs. Louisiana*, 93 U. S. 217; *Wilson vs. Gaines*, 103 U. S. 417; *Louisville & Nashville R. R. Co. vs. Palmes*, 109 U. S. 244; *Memphis R. R. Co. vs. Commissioners*, 112 U. S. 609. And exemptions from taxation which are mere bounties, or privileges granted without consideration, may be withdrawn or repealed by the legislature. *Rector, etc., vs. Philadelphia*, 24 How. 301; *Tucker vs. Ferguson*, 22 Wall. 527; *West Wisconsin vs. Board of Supervisors*, 93 U. S. 595.

constitutions reserved to the legislature the power of amendment or repeal. This means of retaining the control of corporate charters, and of avoiding "the unalterable and irrevocable character of the contract," has been in force since the decision of the principal case, and a suggestion by Judge Story to that effect in his opinion was immediately followed, and many of the states, availing themselves of this mode of action, have maintained a supervision of corporations which has been effective in a high degree. The court has never failed to give the state and the public the benefit of this principle, whenever the charter, or general law, or the state constitution has reserved the power. In a multitude of cases, corporations have been denied the privileges asserted under charters claimed to be irrevocable, and have been subjected to the efficient action of the legislative power.*

As the power to amend and repeal charters would be ample in the state legislatures, in the absence of the provision of the federal constitution forbidding the impairment of the obligation of contracts, such a reservation leaves a state where any sovereignty would be, if unrestrained by express constitutional limitations. Whenever the power is reserved, it may be exercised to amend the charter to almost any extent to carry into effect the original purposes of the corporate organization and secure due administration of its affairs, or to repeal the charter altogether, so as to terminate absolutely the existence of the corporation by the abrogation of "the organic law on which the corporate existence depends."† But the exercise of the power of amendment or repeal cannot deprive corporations of their rights or property acquired by the use of their

* *Pennsylvania College Cases*, 13 Wall. 213; *Miller vs. State*, 15 Wall. 478; *Tomlinson vs. Jessup*, 15 Wall. 454; *Shields vs. Ohio*, 95 U. S. 319; *Railway Co. vs. Maine*, 96 U. S. 499; *Sinking Fund Cases*, 99 U. S. 700. *Railway Co. vs. Georgia*, 93 U. S. 359; *Railway vs. Philadelphia*, 101 U. S. 539; *Greenwood vs. Freight Co.*, 105 U. S. 13; *Spring Valley Water Works vs. Schottler*, 110 U. S. 348.

† *Miller vs. State*, 15 Wall. 478; *Shields vs. Ohio*, 95 U. S. 319; *Greenwood vs. Freight Co.*, 105 U. S. 19.

franchises.* Thus the rights of shareholders and creditors are protected. So that the reserved power of amendment or repeal is not unlimited, or destructive, or violative of vested rights.

To those whose indulgence in complaint of the encroachments of corporations is somewhat sweeping, it may be fairly suggested that the actual and practical operation of this reserved legislative power is a restraint upon corporations much more effectual than they are willing to acknowledge. The inquiry by statistics is difficult, but we venture the statement that the larger number of corporations existing in this country come under legislative control by virtue of provisions in their charters, or in the general laws or constitutions of the states. In the majority of the states, constitutional provisions forbid the granting of charters, except with a reservation of the power of amendment or repeal. The day of special charters is past. General laws, for the most part, are the basis of corporate organization. The present tendency of legislation is not, to say the least, favorable to corporations. And in estimating the necessity for more severe legislative action concerning them, the extent of the present control of them, under the reserved power, should not be under-estimated. And certainly, any criticism upon the effect of the Dartmouth College case, as encouraging corporate independence, should not leave out of view the consistent maintenance of this power by the Supreme Court.

(4) It is well settled that the legislature may exercise the power of eminent domain, to authorize the taking of the property of corporations, including their franchises, upon due compensation.† This principle places the most valuable and exclusive rights and franchises of corporations under legislative control, whenever the public interest appears to the legislature

* *Miller vs. State*, 15 Wall. 478; *Shields vs. Ohio*, 95 U. S. 319; *Greenwood vs. Freight Co.*, 105 U. S. 19.

† *West River Bridge Co. vs. Dix*, 6 How. 507; *Richmond, etc., R. R. Co. vs. Louisa R. R. Co.*, 13 How. 71; *Greenwood vs. Freight Co.*, 105 U. S. 22; *New Orleans Gas Light Co. vs. Louisiana, etc., Co.*, 115 U. S. 650.

to require that new corporations should be organized, and the constantly developing necessities of growing and progressive communities aided by new corporate undertakings. The practical operation of this principle is to keep the limits of the field of corporate exertion under the constant supervision of legislation, and to leave to the determination of the representatives of the people the question whether that field should be enlarged or restricted at any particular period. This end is subserved, and corporations which have acquired vested rights and interests receive just compensation for whatever is taken from them.

(5) The most important adjudications which form a part of the system of doctrine founded on the Dartmouth College case, are the comparatively recent decisions which sustained the exercise of the supervisory and controlling power of the legislature in the "Warehouse" and "Granger" cases, so denominated. These have provoked wide discussion and earnest criticism. They have been assailed by many in the profession; they were accompanied by strong dissent on the part of the minority of the court; they have been hailed with approval and congratulation in large sections of the country where public sentiment was most vigorous in antagonism to corporations; they have been regarded by many, in and out of the profession, as inconsistent in reasoning and principle with the leading case, as indicating a tendency in the court to review and reverse it, and as presaging its final abandonment and overthrow.

These cases were as follows :

In *Munn vs. Illinois*,* the question was as to the power of the legislature of Illinois to fix by law the maximum of charges for the storage of grain in warehouses, at Chicago and other places in the state having not less than one hundred thousand inhabitants, and to require persons doing business as private

* 94 U. S. 113.

warehousemen to take out a license for such business, and to declare the business to be that of public warehousemen. The constitutionality of such legislation was sustained, and it was held that "where private property is devoted to a public use it is subject to public regulation;" that "property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control."

The "Granger Cases"* involved a consideration of the charters of different railroad companies and the extent of the power of the legislature in the regulation of their charges, as well in the absence of any reservation of a right to alter or repeal them, as where such reservation was embodied in the charters or in the constitutions or laws under which they were granted.

These cases decided that railroads are subject to the supervision and control of the legislature, like all carriers at common law, being engaged in a public employment affecting the public interest, and, therefore, under the decision of *Munn vs. Illinois*, subject to legislation as to their rates of fare and freight, unless protected by their charters; that in the absence of charter-contracts the charges by railroad companies for services within the state may be limited by the legislature and a maximum of charges prescribed; that where the state constitution reserves a right of amendment or repeal, the legislature may prescribe a maximum, although the charter

* *Chicago, Burlington & Quincy R. R. Co. vs. Iowa*, 94 U. S. 155; *Peik vs. Chicago & Northwestern Railway Co.*, *Ibid.* 164; *Chicago, Milwaukee, & St. Paul R. R. Co. vs. Ackley*, *Ibid.* 179; *Winona & St. Peter R. R. Co. vs. Blake*, *Ibid.* 180; *Stone vs. Wisconsin*, *Ibid.* 181; *Ruggles vs. Illinois*, 108 U. S. 526.

authorizes such charges as are reasonable; that more than the maximum fixed by the legislature cannot be recovered by the company by showing that the amount charged was no more than reasonable for the services.

Taken together, these decisions assert the complete power of legislative regulation, whenever the business of the corporation is of such a nature, in the judgment of the court, as to affect the public interest.

The "Railroad Commission Cases,"* decided at the last term of the court, affirm the "Granger Cases" and go beyond them, sustaining the validity of a statute regulating rates of transportation and creating a state board of commissioners to supervise and enforce the same. The court holds that the creation of such a board does not violate the charter right of the corporation to manage its affairs through its own directors; that statutes regulating rates of charges do not deprive corporations of their property without due process of law; but it is declared that the power of regulation is not a power to destroy, that limitation is not equivalent to confiscation, and that under pretence of regulating charges, the state could not require a corporation to carry without reward nor do that which amounts in law to taking private property for public use without just compensation or due process of law. As no tariff of charges had been fixed by the commission in question, the court declines to say what action of the commission would have this effect. The power of regulation is declared to be one which cannot be bargained away without express grant. Justices Harlan and Field, dissenting, regard the statute in question as one impairing the charter-contract with the company and their right under the charter to fix their own charges and manage their own affairs through their own directors, officers and agents, though they concede that statutes may be valid establishing railroad commissions for many purposes.

* 116 U. S. 307.

These decisions assert principles which have not received, and, as we believe, cannot receive, the assent of the most weighty professional opinion. The reasoning of the dissenting opinions seems to us to be unanswerable. These express, with cogent logic, abundant authority and masterly strength, the consequences of a doctrine that the legislative power can be unchecked, in its interference with business essentially private, or its prescription of the compensation which private and corporate owners shall receive for the use of their property. Without such decisions, all the rights of regulation of the use of property, and to prevent its abuse to the injury of the public, and for the protection of the public interest, can be effectually preserved, in all cases where special privileges are granted, under settled principles as to the exercise of the police power. To state the reasons of our conviction would be only to repeat the larger portions of the dissenting opinions. The decisions seem to us to be "subversive of the rights of private property, heretofore believed to be protected by constitutional guaranties against legislative interference;" they hold that "all property and all business of the state are held at the mercy of the legislature;" they deprive private and corporate owners of their property absolutely, although under the guise of mere regulations as to its use and employment and non-interference with its title and possession. It seems indisputable that "If the legislature of a state under pretence of providing for the public good, or for any other reason, can determine, against the consent of the owner, the uses to which private property shall be devoted, or the prices which the owner shall receive for its uses, it can deprive him of the property as completely as by a special act for its confiscation or destruction." "There is, indeed, no protection of any value, under the constitutional provision, which does not extend to the use and income of the property, as well as to its title and possession."

It is difficult to resist the conviction that the court, in deciding these cases, was not altogether insensible to the

pressure of that public sentiment which prevailed at the time—the “Granger” sentiment of the Great West.

That the principles of these decisions are inconsistent with the reasoning of the Dartmouth College case, is maintained in the dissenting opinions and insisted upon by professional criticism. The question “to what purpose can the constitutional prohibition upon the states, against impairing the obligation of contracts, be invoked, if the state can, in the face of a charter authorizing a company to charge reasonable rates, prescribe what rates shall be deemed reasonable for services rendered,” can receive, it seems to us, but one answer, viz., the constitutional inhibition is of no effect. It is true that the court expressly declares its adherence to the leading case; that it holds that the railroad charters in question contained no contracts; that it considers that the College case and the “Granger Cases,” can stand together; and certainly, so far as establishing the law is concerned, the court is the final judge of its own consistency. But it seems to us that the principle of these cases, that the use of property affecting the public generally clothes it with a public interest, conflicts with the decision that the college was a purely private corporation; that the decisions tend to justify unchecked legislative control of all private corporations; that the reasoning of the court is inconsistent with the protection of the contracts even where the charters expressly contain them, and tends to allow the impairment of the contracts of corporations with third persons, especially where securities have been issued upon corporate property.

The legislative regulation of corporations, thus maintained, is based upon the nature of the business carried on. The court establishes the general principle that whenever such business is of public consequence, and affects the community generally, the legislative power is complete to regulate. If individuals or corporations devote their property to uses in which the public has an interest, there is, in effect, a presumed

dedication of the property to public use, and an implied submission, on the part of the owners, to legislative control or the public good. The limits of this power of regulation, therefore, depend upon what the court may determine, in every case, as to the nature of the business. These limits are undefined, and although the court plants itself, professedly, upon the principle of dedication to public use, and an implied consent of the owners of the property, many regard the virtual ground of decision to be the police power, which is generally exercised *in invitum*. But the declared opinions of the court must be accepted as to the ground of their decision. The power of regulation is, therefore, left to the combined determination of the legislative and judicial authority as to the nature of the business. The most recent decisions, presently to be noticed, show that the court asserts its power to determine, in every case, what is business of a public nature, and what is ordinary business, and when and to what extent the police power may be exercised in respect to it. But may it not be fairly asked, is not this power of regulation equivalent, as thus asserted, to the power of the legislature over public corporations, and are not corporations virtually held to be public whenever it can be found that the business or purposes of the corporate organization affect the community generally?

The importance of the results of these decisions, alike to corporations and to the public, has been demonstrated in the period which has elapsed since they were announced. Upon the former they have had marked effect in discouraging corporate investments, and have rendered corporate rights and franchises less valuable. Whether the public has derived from the decisions the benefit claimed for them is at least open to question. That part of the people which is most hostile to corporations finds, in these decisions, encouragement for the expectation that the court will, at no distant day, reverse the principal case, an event by which it is supposed a millenium of relief for a corporation-oppressed people will at last arrive.

(6) In cases subsequent to the "Granger Cases," where the constitutional protection of contracts was invoked in behalf of corporations carrying on business injurious to the public health or morals, the court has declared the principles governing the exercise of the police power, and decided that charter-contracts do not preclude the legislature from enacting such laws as are necessary for the protection of the public; that the legislature "cannot bargain away the public health or public morals," and that authority granted by statute to corporations or individuals to engage in particular private business detrimental to the public, does not constitute a contract preventing the withdrawal of such authority.*

(7) So, in a later case, the principle of the leading case has been urged to protect the corporations from legislation concerning their business intended for the security of persons dealing with them, such as statutes regulating the business of life insurance companies. Such legislation was held not to be within the constitutional inhibition. It was decided that all grants of corporate privileges and franchises are subject to the condition that they shall not be abused, nor employed to defeat the ends for which they were conferred, and to an equally implied condition that the legislature may prescribe such reasonable regulations as will secure the ends for which the corporation is organized, provided such regulations do not interfere with or obstruct the enjoyment of the corporate privileges. This principle is expressly declared to be essential to the protection of the public against perils arising from the ignorance, misconduct or fraud of those who manage corporations.†

(8) The decisions in the New Orleans Gas and Water

* *Beer Co. vs. Massachusetts*, 97 U. S. 25; *Fertilizing Co. vs. Hyde Park*, *Ibid.* 660; *Boyd vs. Alabama*, 94 U. S. 645; *Stone vs. Mississippi*, 101 U. S. 814; *Butchers' Union Co. vs. Crescent City Co.*, 111 U. S. 746.

† *Chicago Life Ins. Co. vs. Needles*, 113 U. S. 574; and see *The Sinking Fund Cases*, *ubi supra*.

cases,* at the last term of the court, maintain anew the validity of exclusive charters as contracts, and declare the consistency of all previous adjudications with the complete exercise of the police power by the state, to protect the public health, the public morals and the public safety. These cases involved the validity of charters granting to private corporations exclusive privileges to supply the city of New Orleans with gas and water by means of pipes, mains and other conduits laid in the public streets of the city. The court held that such charters were contracts, which could not be impaired by subsequent constitutional provisions by the state; that the business to be carried on was of a public character; that the power of a subsequent legislature to recall such grants could be limited by the charter-contracts, and exclusive privileges granted in such cases stand upon the same principle as exclusive grants to construct and maintain highways, bridges and ferries, and exemption from taxation by charters; that the former decisions of the court (*Beer Co. vs. Massachusetts*, *Fertilizing Co. vs. Hyde Park* and *Stone vs. Mississippi*) sustaining the exercise of the police power, rest on the principle that one legislature cannot limit the power of its successors in relation to private business affecting the public health or morals; that authority given by the legislature to corporations or individuals to engage in such particular private business does not constitute a contract preventing withdrawal of such authority or the granting of it to others; but that the business of supplying a city with gas or water is not ordinary business in which everyone may engage, but is of a public nature; and that even in such case a grant of exclusive privileges does not withdraw the business from the control of the police power, when the public health, morals or safety require its exercise.

These decisions affirm again the adherence of the court to the *Dartmouth College* case, but assert for the court the power to determine in every case whether the nature of the

*115 U. S. 650-674.

business is private or public, and, consequently, when the police power may be applied. These cases, by those who hold that the decisions of the court cannot be reconciled, will be regarded as strengthening their view of the court's inconsistency, and as they consider the "Granger Cases" to be a radical departure from the principal case, they will only find in these recent decisions a new and variant step, not in the path of consistent legal principles. They will not hesitate, therefore, to insist that the court, in every future case, as in its later adjudications, will decide as their views of public policy at the time may require.

But if we can conceive the court, for a moment, as defending their own course of decision, they would say, "The settled law upholds the true purpose of the constitutional inhibition, rightly protects the just rights of corporations, secures due administration of their affairs, and consistently maintains the integrity of the sovereign powers of the state, the police power, the power of eminent domain, the reserved power of amendment and repeal, and thus establishes sufficient and effectual restraints upon corporations."

IV. This survey and examination of the principles established as law by the leading case and succeeding decisions resting upon it, considered together, has been undertaken with a purpose to exhibit a connected view of the system, if it may properly be so regarded. By such a view we may better estimate the force and conclusiveness of the criticism which has assailed the original decision and its consequences, and which will continue, probably, to arraign the court before the bar of public opinion. Public opinion, sooner or later, insensibly moulds the law.* Whatever we may desire as lawyers,

*"Public opinion may and does review the constitutional doctrines announced and acted upon by the Supreme Court of the United States, and sometimes this review has been followed by very practical consequences." Geo. Ticknor Curtis, in his discussion of "The Doctrine of Presumed Dedication of Private Property to Public Use" (John Wiley & Sons, N. Y., 1881), citing "The Dred Scott Case."

however much we may wish that the judicial tribunals shall be above the reach of popular opinion, nevertheless they are influenced by it. The law is the outgrowth of the necessities of the community. It is idle for the profession to ignore the serious charge that by reason of the decision in the Dartmouth College case, corporations possess almost sovereign powers, and that the doctrine of an inviolable charter-contract has suspended, in their favor, the exercise of the sovereign powers of the state. This charge must be met according to its gravity; it must be considered whether the need of restraint upon corporations is increasing or diminishing, and where the remedies for corporate abuses and aggression are to be found, if required. But this inquiry will not be prosecuted, either in the legal profession or in the judicial tribunals, in any spirit of indiscriminating enmity to corporations. The incalculable benefits they have conferred upon the country, the great work they have performed in its progress and development, are manifest. The legal profession can do much to influence and guide public opinion; to show that the demand for the reversal of the Dartmouth College case is impracticable; to maintain the integrity and permanence of principles which are, to say the least, settled law; to inculcate that respect for the highest judicial tribunal of the country to which it is entitled by its position, its history and the purity, abilities and learning of the judges. This may be done, and ample room will be left for free and enlightened criticism of its decisions. It is a reasonable expectation that the law will be finally settled in such a way as to reconcile complete protection of corporate rights and vested interests with the unimpaired exercise of the sovereign powers of the state. The majority of the court regard that as even now accomplished, but as to this there is a wide difference of opinion. One of the judges who has most strenuously resisted the doctrine that the taxing power can be restricted by charter-contract, predicts that it must be finally abandoned.* Whether this can

* Miller, J. in *Washington University vs. Rouse*, 8 Wall. 444.

be done without overthrowing the whole system of decisions is doubtful; because, as we have seen, the taxation cases are those wherein the principle that a charter is a contract has been most frequently and explicitly affirmed. If the principal case is not reversed, still less is it probable that the remedy suggested by the most earnest of its opponents, an amendment of the Federal Constitution, will be attained. It would be resisted by all the power of corporations, and such a measure could not be enacted unless by practical unanimity of all public interests and general concurrence of professional and public sentiment. If the aims, the ambitions, the independence of corporations should continue to be aggressive, and become dangerous to the public welfare, remedies must and will be found. What these shall be is not within the scope of the present discussion.

As lawyers and as citizens we may indulge the hope that these questions will be determined and these contentions composed, with complete conservation of the judicial and legislative powers of government, and with just regard for the interests of corporations, the protection of the public, and the welfare and progress of the nation.

PAPER
READ BY
JOHN F. DILLON.

Prepared at the request of the Committee on Judicial Administration and Remedial Procedure.

Law Reports and Law Reporting.

In the Annual Address, which, in 1884, I had the honor to deliver before this Association, I made, among other, the following observations:

“The most distinctive feature of the common law of England and America is the rule of judicial precedent, or the binding force of adjudged cases as rules of decision for like causes. In no other system of jurisprudence is such force given to judicial judgments. The result is that elsewhere than in Great Britain and America the judicial reports are [comparatively] few, since judicial judgments have no authority and [theoretically] no higher rank than expositions or commentaries of private writers.

“The corresponding result is [according to a recent statement] that in 1881 the judicial reports of England numbered two thousand nine hundred and forty-four volumes, and in this country three thousand, and they are increasing at the rate of over one hundred volumes a year.* ‘Where,’ I

*I addressed to the librarian of the New York Law Institute the following letter:

NEW YORK, August 7, 1886.

JOHN M. LODEWICK, Esq.,
Librarian Law Institute,

Post Office Building, City.

DEAR SIR:—The Committee of the American Bar Association on Judicial Administration have under consideration the subject of multiplicity of law reports. This subject was discussed by me in my address before that Association in 1884, and I have been requested to give the subject further consideration and present it to the Association, which meets next week at Saratoga. If you have the data at hand to answer

without too much trouble, at as early a date as convenient, the questions below, you will place the Association and myself under obligations which will be duly appreciated.

7. How many different elementary or text-books of all kinds have you in the English language (including English and American) in your library?

JOHN F. DILLON.

Rooms 116-123, Fourth Floor, P. O. Building.

NEW YORK, August 19, 1886.

DEAR SIR:—I regret deeply my inability, at this time, to furnish you with a more complete data than the following. The list below was carefully compiled by my associate, Mr. William H. Winters.

Federal Reports to Dec. 31, 1885.....	409
Miscellaneous American Reports.....	203
American State Reports.....	3186
	<hr/>
American Law Periodicals, Dec., 1885, not existing.....	3798
" " " " " "	575
" " " " " "	702

Conscious of the meagreness of the material sent, I can only state that I am of the opinion that the figures are about correct, and that I am indebted to Mr. Winters entirely for the same.

Very respectfully yours,

JOHN M. LODEWICK.

of such serious and pressing moment that they may well engage the attention of the Association.'" (Report American Bar Association, 1884, pages 223, 224).

I did not in that address undertake to make any direct answer to these questions. The Association on the motion of Mr. Fox, of New York, seconded by Mr. William Allen Butler (*Ib.* p. 48), adopted this resolution:

"*Resolved*, That so much of the Annual Address as refers to the evils of the system of reporting the decisions of the courts be referred to the Committee on Judicial Administration and Remedial Procedure, with a request that they report at the next annual meeting of the Association."

The Committee made an informal report last year (page 39, Report, 1885), and the matter was made the special order for the second day of the meeting of this year.

I have been requested by the committee to present to the Association for their consideration my views on the general subject and in support of the resolution which they will offer.

Whoever has attentively considered the matter, will, I think, agree that its difficulties are equalled only by its importance. He will further agree, I think, that we have reached a period in our legal history when it is at least wise to stop and take an observation, that we may know, if possible, where we are and whither we are tending.

I shall not attempt an exhaustive treatment of the subject. Your time would not permit it, nor do I feel that I am competent to do it. I content myself with presenting some general views and the conclusions to which they seem naturally to lead, in the hope that they may call forth discussion, consideration and possibly action on the part of the Association.

Speaking generally, our law is composed of two main constituents: First, *statute law* (including, in this country, constitutional law); and, second, *judiciary or case law*, that is,

the law made by the judges in the accustomed and direct exercise of their judicial functions.

It was long a favorite fiction that the judges did not make, but only declared, the law. But it is no longer anywhere denied, nor can it be, that the judges, not only in the process of the interpretation of statutes, especially where they *extend* them to cases without their letter, but within their supposed reason, or equity, or general utility, but also in cases which, where the statutes are silent, they decide by rules deduced from previous decisions, or decide by reference to the principles of natural right or universal justice, are actually, though indirectly, engaged in *legislating*, since they frame the rules which they apply to the transactions in hand, and which constitute the basis of the judgments they pronounce.

Since statutes must, of necessity, be expressed in general terms, and since no human foresight is competent to anticipate, and no human wisdom is able to provide for all of the cases, or even all the classes of cases, which will arise out of the endless variety and diversity of human affairs, the work of indirect judicial legislation, such as the judges have been accustomed to perform, is, as it seems to me, a necessary and permanent part of any system of jurisprudence. This function of the judges may be limited, and it ought to be, by the enactment of legislative rules wherever it is wise and practicable to do so. But it can never be entirely abrogated until the impossible work shall be achieved of a legislative provision in advance for all possible combination of circumstances and cases. And, therefore, if we had a code as complete as human skill and care could make it, the work of judicial interpretation would still be necessary, and the duty of giving judgment in cases not expressly provided for in it would still have to be performed. Yet it by no means follows that such a code is not highly to be desired.

There will never come a time when all our laws will be in the form of statutes; never a time when judiciary law—that is, law which is evolved in and by the very act of administering

justice—will not form a part of our legal system. It is only a question, at any given period, how far it is necessary or expedient to transmute the judiciary law into statutory form. At the bottom, this is the question which, at this time, the unmanageable number and constant multiplication of the reports, which are the source or evidence of judiciary law, is pressing upon us for solution. There inevitably comes a stage in the legal history of every people when its laws become “so voluminous and vast” that an authoritative and systematic recompilation or restatement of them, to the end that they may be accessible, and (to use, in default of a better, Mr. Austin’s uncouth but expressive word) *cognoscible* to those who are governed by them, or at least to those whose business it is to advise concerning them, and to those whose duty it is to administer and apply them.

The Roman law, by means of commentaries on the text of the XII Tables, by imperial constitutions, decrees, edicts and rescripts, had before Justinian, attained to such proportions that it was said to be the load of many camels. The Roman situation was tolerable compared with ours. Our judiciary law, which embraces that of England, now runs back through several centuries to the reign of Edward II, without revision or authentic restatement. It is scattered through volumes so numerous that the memory is taxed to its utmost to remember even their names, that only the rich can buy them, and that the practicable industry and strength of no human being can examine, much less study and digest them. In short, the bulk of our judiciary law is now such that it may, without exaggeration or metaphor, be fitly described as the load of many cars.

I shall not enter upon the discussion of the respective intrinsic merits, under various conditions, of statute and judiciary law. The usefulness and value of the law reports and of the materials they contain must be admitted by all. Even Bentham, who combined the iconoclast with the reformer, and who denounced with unsparing severity judge-made law for

its "confused, undeterminate, inadequate, ill-adapted and inconsistent" character, yet admits that if you "traverse the whole continent of Europe, ransack all the libraries belonging to the jurisprudential systems of the several political states, add the contents all together, you will not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement—in a word, in all points taken together, in instructiveness—to that which may be afforded by the collection of English *Reports of Adjudged Cases*, on adding to them the *Abridgements* and *Treatises*, by which a sort of order, such as it is, has been given to their contents."

Let all this be granted, yet as against the merits and value of this great body of judiciary law must be set off inconveniences and defects of such a serious character that they have at length become positive evils. I cannot stop to enumerate all of these. Those which chiefly concern the present discussion relate to the already unmanageable bulk and unnecessary uncertainty of our case law. How this state of things has been brought about is obvious enough. Thousands of useless cases, that is, cases which are mere repetitions, and which add nothing to the law, have been and are constantly being reported.

Multitudes of cases have been questioned, limited and overruled. The reports abound in cases which are conflicting. The simplest heads of the law are overlaid with a mountainous mass of decisions which grows day by day.

To an examination, study and comparison of this vast body of law, with such aids as digests and text-books can give him, is the legal inquirer remitted and doomed in his toilsome search for the existing law in all cases which are not provided for by an adequate statute.

The evils thus produced have long been felt, but the difficulty of remedying them has also been felt or believed to be so great that remedies, though at times suggested and urged, have never been applied. So far as the evil has been remedied, it has been by means of fragmentary and intermittent legislation.

Over two hundred and fifty years ago, when the evils from

the accumulation of statutes and reports were almost immeasurably less than they are at the present time, the greatest intellect which England has ever produced gave to the subject the most thoughtful and intelligent consideration: I refer to Lord Bacon. With him the amending of the laws of England was ever a favorite subject, and one to which he often turned in the intervals when he was not pursuing the vain baubles of official distinction, and upon the accomplishment of which, even after his sad and melancholy fall, he courageously entered in his old age unaided and alone; but to use his own language, "finding it a work of assistance, and one which he could not master by his own fancy and pen," he reluctantly laid it aside.

His plan was comprehensive. It embraced the reduction to a system of both the statute and the common laws. I must omit, as not here relevant, any reference to his suggestions as to the mode of dealing with the statutes. What he proposed to do with the judiciary or case law it will be instructive to refer to, since it will show that he comprehended the subject in all its bearings.

His scheme for compiling and amending the laws of England, as proposed to King James, consisted of two parts—"the digest or recompiling of the common laws, and that of the statutes."

By the former, he meant mainly "the reducing or perfecting of the course or corps of the common laws;" by which he meant "that there is to be made a perfect course of the law," *in serie temporis*, or year books, as we call them, "from Edward the First to this day." In compiling which there is to be observed the following points:

1. All overruled cases are to be left out
2. There are also to be left out "all cases, wherein, that is solemnly and long debated, whereof there is now no question at all, but the judgments only and resolutions shall be included, without the arguments, which are now become but frivolous," *i. e.*, unnecessary, accompanied, however, with a

memorandum explaining why the cases are not given at length, and where they may be found.

3. All cases "merely of iteration and repetition are to be purged away;" and "cases of identity, which are best reported and argued to be retained instead of the rest," with a proper reference to the omitted cases where the point is argued at large.

4. Conflicting cases to be "specially noted and collected that they may be put into certainty, either by assembling all the judges in the Exchequer Chamber or by parliament."

5. "All idle queries, which are but seminaries of doubts and uncertainties, are to be left out, and no queries set down but of great doubts, well debated and left undecided for difficulty; but no upstarting queries which were better to die than to be put into the books."

6. Cases reported with too great prolixity to have their tautologies and impertinences cut off, and put into a more compendious report.

The course being thus compiled, for the future the cases should be reported by official reporters "who should be grave and sound lawyers, with an honorable stipend."

When we consider the comparatively small number of statutes and reports which existed at that time, the scheme which he propounded was practicable, "with assistance," and if executed as proposed would have greatly reduced the bulk and improved the character of the English law. •

It will be noticed that Bacon's scheme was not what would now be called radical, and related more to the form than the substance of the law. Indeed, he was careful to say that "The work, which I propound, tendeth to pruning and grafting the law, and not to ploughing up and planting again; for such a remove I should hold, indeed, for a perilous innovation."

But his scheme was not executed and his suggestions bore no fruit.

Statutes and reports kept on accumulating for nearly two

hundred years, when Bentham appeared, and for the evils arising from the bulk and uncertainty of judiciary law, he proposed as a remedy what he termed *codification*. Exactly what he meant by codification, and how far his views are sound or practicable, are topics upon which I do not purpose to enter. I stop only to observe that it was the character or condition, or faults of judiciary law, that mainly suggested to him the idea of a code as the proper corrective or remedy. His views were, perhaps, extreme, although the judgment of a century hence may possibly show that on this subject he was not only wiser than his own generation but even wiser than ours.

Bentham died, but his suggestions of a code as a remedy for existing evils have given rise to the still existing controversy between the advocates of statute and of judiciary law. On that controversy I do not here enter. Judgments may differ as to what a code means or implies, and how far a code is expedient, or how far it is practicable, but it is clear that resort to the Legislature for comprehensive legislation on special subjects which is in the nature of codification, if it be not codification itself, is more and more practised.

At a quite recent period the English Society for the Promotion of Law Amendment favored a method of dealing with the English reports substantially the same, it seems to me, as Lord Bacon's method above referred to. In March, 1863, that society adopted a resolution that "it is highly expedient that the reported decisions of our superior courts of law in England and Ireland, from the earliest to the present time, should be forthwith expurgated and consolidated, and their undue accumulation for the future be, if possible, prevented."

Lord Chancellor Westbury, as late as 1865, proposed from the woolsack to the House of Lords a project "to revise and expurgate the unwieldy and still increasing mass of the decided cases, reducing them to such as constituted the body of existing authorities, and which might, in their turn, be digested and arranged."

This, it will be perceived, is substantially Lord Bacon's idea, but as Lord Westbury soon afterwards closed his official career, like his great predecessor, with the loss of the public confidence, the stupendous undertaking which he proposed dropped with his retirement. Such a work is theoretically possible, but is so vast and difficult that it could not be accomplished without the authorization and aid of Parliament, and it does not seem probable that it can receive, *per se*, the Parliamentary sanction; and I venture to predict that it will never be done except as preparatory to a general scheme for the revision and consolidation or codification of the statutory and judiciary law of the realm or specified departments of it.

The conservatism of the English bar is shown in the comparatively small results that come from the agitation of the subject revived or commenced in 1863. The special evils which seemed to be felt, or considered remediable, consisted in the number of regular and irregular reports, the latter consisting of the decisions, as published and duplicated in law periodicals, such as the *Law Journal*, *Jurist*, *Law Times*, *Weekly Reporter*, etc., in each of which, as well as in the regular reports, were practically given all the decisions of all the principal courts, many of which really contained nothing new or valuable. When the bar came practically to deal with the matter, they shut their eyes to the past, or to any general view of the subject, and undertook only to deal with the existing methods of law reporting. What they did in this respect is, I think, quite instructive, and I will briefly state it.

In November, 1863, influential members of the English bar requested the Attorney-General to call a meeting of the bar for the purpose of ascertaining their opinion as to the existing system of law reporting, with a view to an amendment thereof.

At a meeting held in December, 1863, convened by the Attorney-General, it was

"*Resolved*, That, in the opinion of this meeting, the present system of preparing, editing and publishing the reports of judicial decisions in this country requires amendment."

A committee of twenty-two members of the bar was appointed to consider the matter, consisting of the Solicitor-General, the Queen's Advocate and eight Queen's Counsel, nine members of the outer bar and three equity draftsmen.

The committee of the bar, through a sub-committee, communicated with foreign jurists to inquire into the mode of recording and reporting judicial decisions in the various European states and in the United States of America. The facts, as ascertained by them, were thus stated:

"To begin with the system adopted in France. Every judicial decision is required to be in writing, and to be motive, *i. e.*, to disclose on the face of it the grounds and reasons on which it is founded; and when the signature of the President of the Tribunal has been affixed to these solemn judgments, it is the business of the greffier to see them entered on the register of the courts, and only one version of them can therefore ever legally appear.

"The record of the tribunals thus containing an authentic version of every decision, the legal profession and the public have at all times access to the register to ascertain what has from time to time been decided, and it is competent for any one to make from the register a selection of such decisions for publication. The collections of decisions by Sirey and Dalloz and Ledru Rollin, have been thus prepared. Though these works are deservedly held in great esteem, they are not official publications, any more than any series of English law reports.

"In Norway and Sweden, the judgments of the ordinary tribunals are always given in writing, and every case entered on the protocols of the courts; and in the supreme courts of appeal, when the votes of the judges are given separately, it is the business of the registrar of the court to enter on the records of the court, not only the final judgment or conclusion, but the grounds and reasons of the decision of each judge. Here, as in France, therefore, the records of the courts supply ample materials for the preparation of books or collections of decisions, and such publications are left wholly to free trade.

"In Denmark, though it is competent for any one to take down, print and publish reports of cases and decisions of which he has himself taken notes, the only authentic version of judicial proceedings is the entry in the *dombistocol*, under the hand of the judge, containing not only the conclusion itself to which the court has arrived, but the facts and reasons and grounds of the decision; and from these, selections of cases which may serve as precedents are made by the direction of the courts, though it would seem that other selections made by competent private publishers would be received with equal attention.

"In Italy, all judicial decisions, whether civil or criminal, must be read aloud in open court with the grounds in fact or law set out at length; and authentic minutes of the judicial opinions so pronounced are duly entered in the register of the court; and compilations of the principal decisions of the four Supreme Courts of Cassation at Milan, Florence, Naples and Palermo, are published by voluntary editors, whose province it is to make a proper selection of cases for publication, to give an analysis of them in the head and marginal notes, and to explain and illustrate them in other annotations. These compilations only so far receive the protection of the state that a certain number of copies are subscribed for out of the public treasury. The compilation entitled '*La Legge Romana*' is a journal of judicial and legislative proceedings for the kingdom of Italy, published at short intervals (the judicial three times a week), and containing in an abridged form notes taken from the minutes in the registers of all the important cases disposed of." (The *Jurist* [London], New Series, vol. x., part 2, page 249.)

The scheme of reporting recommended was that the matter should be placed under the general control and management of a council composed of members appointed as follows:

Two by Lincoln's Inn; two by the Middle Temple; two by the Inner Temple; one by Gray's Inn; one by Sergeant's Inn, and two by the Incorporated Law Society.

The result of this movement was the establishment of the present system of law reports in England, under the direction of the Council of Law Reporting.

LET US SUM UP SOME OF THE CONCLUSIONS to which the foregoing discussion seems to lead.

In continental Europe, the superior tribunals are, as we have seen, required not only to put their judgments, but the reasons and grounds thereof in writing, and to enter the same of record. So in England, the superior courts either give written opinions, or orally pronounce their opinions, that is, the reasons and grounds of their judgment, and these are taken down and revised by the judges, and when published constitute the judicial reports. In this country, it is generally required by statute, or, at all events, it is the universal practice for the appellate courts to give written opinions. The wisdom of this course may not only be inferred from the universality of the practice, but rests upon obvious reasons. It necessarily secures for the cases decided greater examination, reflection and consideration on the part of the judges. The bar is the real constituency of the bench, and the opinions of every conscientious judge are written under the eye of a scrutinizing and intelligent profession.

The practice of judges of inferior courts to give, when practicable, written opinions is, for like reasons, to be commended, rather than discouraged, since it tends to secure better results in the administration of justice. A wise rule of the Supreme Court of the United States requires any written opinion of the inferior court in the cause to be sent up as part of the record on appeal.

THE NEXT QUESTION IS: *How far is it desirable that judicial opinions should be reported, that is, published for the information and use of the profession?*

The theoretical answer to this inquiry is, in the present state of the law, plain enough, viz., that only such cases ought

to be reported as are useful as precedents or constitute new developments of the law, or overrule or limit former decisions, or newly construe legislative enactments, etc. But the practical difficulty is, who is to judge of this? It will hardly do to leave it to the reporter, and is useless to leave it to him, if he has a pecuniary interest in the multiplication of his reports. It is almost equally useless to leave it to the judges, since a judge who has laboriously examined a cause and written a careful opinion upon it, will very naturally conclude that it is worth reporting.

As a practical result, the body of the opinions of the courts of last resort will continue to be reported, however desirable it may be that cases which wholly turn upon the facts, and cases of "mere iteration and repetition," should not be officially reported.

A MORE DOUBTFUL QUESTION, PERHAPS, IS: *Whether it is desirable that the reports of courts inferior to the courts of last resort should be discontinued?*

I say this is, perhaps, a more doubtful question, since many lawyers seem to be of the opinion that such reports, containing many ill-considered opinions, really embarrass (partly by reason of the doctrine of judicial precedent) rather than aid in the administration of justice. But judges will not write opinions if they are not to be published, and it is not expedient to adopt a policy which would discourage or prevent that deliberate study of cases which written opinions tend to promote and secure. Besides, it would be impracticable to prevent their publication, either officially or unofficially.

Written opinions when filed belong to the public records, and it would be against first principles to prohibit their publication by statute, and without such prohibition they would find reporters and publishers, so long as there was a demand therefor which would reward the labor and expense of the publication.

To keep the increasing bulk of case law within smaller limits, it has been suggested *that dissenting opinions should not be published*. But on what ground could this be justified? Who is authorized to assume that the majority are always right. Not unfrequently dissenting opinions are the sounder. Such cases are always carefully considered and the majority and the minority set forth their competing reasons and submit them to the fair judgment of the bar. If a dissenting opinion is written it is a fact in the case, and its suppression or non-publication, simply because it is a dissenting opinion, can be justified on no ground either of principle or of public policy. Who shall establish a censorship over the publication of any class of judicial opinions? It seems to me that this cannot be done until we shall forget Milton's plea, in which he "rose to the height of the great argument," for the liberty of unlicensed printing. Even if we doubted the utility of the publication of the decisions of inferior courts or of dissenting opinions, I know of no principle on which their publication ought to be prohibited by the legislature.

To thoughtful lawyers comparative jurisprudence often suggests useful inquiries. We find in the English and American law an already unwieldy mass of reports. In twenty years they will number ten thousand volumes, in fifty years twenty thousand. The jurisprudence of the continent of Europe presents no corresponding phenomenon. What is the reason? It is owing, chiefly, I think, to the doctrine of judicial precedent, which is peculiar to our jurisprudence and which gives to *decisions authoritative force as law, which the judges are bound to apply to all cases which they find to fall within the principle of the previous decisions*. This doctrine makes the possession of the reports of adjudged cases almost as much of a necessity to the lawyer as the possession of the statutes.

In European states judicial decisions have no binding effect as precedents, and hence the judicial reports are there comparatively few. And it is certainly a question which may at least excite inquiry, whether, in the present comparatively

matured state of our law, the doctrine of judicial precedent in the sense and scope of the English and American jurisprudence, is now really a better doctrine than the one which prevails in the continental system, which practically, although not theoretically, gives to the opinions and judgments of the superior tribunals influential, but not authoritative and binding weight. Case law is part of the European systems; it lacks simply the element of *authority*, which it has with us.

As judiciary law is a necessary and indestructible part of every jural system, and peculiarly of our legal system, the publication of reports of adjudged cases will doubtless continue in the future, as in the past, without substantial restriction. So long and so far as the bar find the reports to be necessary or useful they will be published, and I am unable to see any material checks which we would be warranted, or which it would be practicable, to put upon such publication by legal enactment, however desirable it is to keep case law within more circumscribed limits.

There is no reason to doubt that the judicial reports will continue to increase as rapidly as ever, adding to the bulk and, to some extent, to the uncertainty of the law, and this will go on and on until the effect becomes at length insupportable. A remedy will then be found, for the interests of justice are primal and eternal, and are not doomed to be crushed by the very machinery which has been devised only that justice might be promoted and secured. Whether that remedy will be found in the breaking down or modification of the doctrine of judicial precedent in the rigor and scope in which it at present exists, of which even now we see many signs, or whether it will be in codification in some expedient and practicable shape, or both, or otherwise, we may not be able to foresee, but that some cure will be found is as certain as that law and justice are the great and permanent and paramount interests of man on earth.

There are, so far as I am aware, no special evils in the *manner* of reporting in this country, which seem to call for

correction. One fortunate circumstance in the situation is the low price at which enterprising and rival publishing houses are now furnishing the state and federal reports. The manner in which the judges shall write their opinions cannot be prescribed to them. The profession are, however, glad to see, in more recent years, a quite general disposition in the judges to do less essay writing, and to hand down more compact and shorter opinions—a very desirable change, especially in cases which either turn on the facts or which contain no new principles or novel application of old principles.

The foregoing views tend to support the resolution which the committee have submitted to the Association, viz.:

Resolved, That while this Association records its approval of the present tendency of the judges to write short opinions, especially in cases turning on facts and those not useful as precedents, and doubts the utility, in the present state of the law, of the use of decisions of inferior courts as precedents, it does not deem it practicable to interfere by legislation to prohibit or limit the publication of any class of reports, and that the evils of the great volume of judiciary law must be remedied otherwise than by legislation restricting absolute freedom in the publication of adjudged cases.

This resolution will, I hope, be adopted.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM
ON RELIEF OF SIMPLE CONTRACT CREDITOR AGAINST
FRAUDS OF INSOLVENT DEBTOR.

To the American Bar Association :

The Committee on Jurisprudence, to whom was referred the resolution offered at the session of 1885 by D. K. Tenney, Esq., of Wisconsin, respectfully report as follows :

The resolution was this :

“ *Resolved*, That the Committee on Jurisprudence and Law Reform be instructed to consider and report at the next annual meeting whether the rule of law which deprives the simple contract creditor of an insolvent debtor of all equitable relief against the frauds of the debtor until the claim has first been reduced to judgment is now a senseless relic of antiquity which ought to be abolished by legislation ; and if the committee shall so find, that they prepare and also report a bill suitable for enactment and to be presented to Congress and the legislatures for that purpose, placing the bond, promissory note or other undisputed liability of an insolvent upon the same plane for affording equitable relief against fraud as if such obligation had previously been adjudged by the court.”

The committee do not feel able to report in favor of any legislation such as is contemplated by the resolution. The reasons which have led them to this conclusion may be briefly stated.

If law, both substantive and remedial, were in this country the subject of a code, and if all rules defining rights and prescribing modes for their enforcement were regulated or to be regulated by statute, it would no doubt be wise to introduce some such provision as that contemplated by the resolution. But under existing circumstances, and in view of the remedies believed to exist in all or nearly all of the states of the Union, for the purpose of correcting the mischief alluded to, and in view, also, of the fact that the rule of law in reference to the

remedy of the simple contract creditor, as laid down in the resolution, is perhaps too broadly stated, the committee has not deemed it advisable to recommend any statutory change.

The remedy in equity, not only for the collection of debts but also for restraining frauds attempted to be perpetrated by debtors upon their creditors, is and has long been well established. Two classes of cases involving the rights of creditors long ago presented themselves to the attention of courts of equitable jurisdiction. The first class embraces those cases in which assets of the debtor existed, but assets which nevertheless could not be reached by common law process. Such assets, it was held, *could* be rendered applicable to the payment of the debt by virtue of a bill in equity, which, when thus used, was not inaptly termed an "equitable levy." Such bills were not aimed, at all events primarily, at fraudulent dispositions of property, but were designed simply to effect that which could not be effected by any known legal process of execution, namely, a levy upon equitable property. This jurisdiction by creditors' bill, pure and simple, was not founded on fraud, but on the inadequacy of the common law remedies. The other class of cases which claimed the attention of the chancellor were those in which the inability to get at a debtor's property was not due to the nature of the property, but to the fact that a fraudulent transfer thereof had been made. Here, then, were cases of *fraud*. It was fraud of such description, moreover, that it properly formed a basis for the exercise of equitable jurisdiction, inasmuch as there was no full, adequate and complete remedy at law for its redress. Hence, in these cases also, equity interposed, but it did so not, as in the case of a true creditors' bill, merely to supply the defects in common law machinery, but by virtue of its general jurisdiction to defeat fraud.

These two classes of cases may be well illustrated, and the distinction above suggested shown to be sound, by a reference to three decisions, two by the Supreme Court of the United States and the third by Chancellor Kent.

In the case of *The Public Works vs. Columbia College*, 17 Wallace, 521, Mr. Justice Field said: "The jurisdiction of a court of equity to reach property of a debtor justly applicable to the payment of his debts, even when there is no specific lien on the property, is undoubted. It is a very ancient jurisdiction." And in the comparatively recent case of *Taylor vs. Bowker*, 111 U. S. 110, Mr. Justice Harlan substantially expressed the same thought when he said: "Courts of equity are not tribunals for the collection of debts, yet they afford their aid to enable creditors to obtain payment when their legal remedies have proved to be inadequate." The jurisdiction, therefore, of chancery in such cases is founded on the inadequacy of the common law remedies, and may be exercised even when there is no *fraud*.

On the other hand, the subject of bills filed to subject property which has been transferred in *fraud* of creditors to the payment of their claims was carefully considered by Chancellor Kent in *Bayard vs. Hoffman*, 4 Johnson's Chan. 452. If the facts in that case are examined, it will be found that the doctrine there laid down by the chancellor is broad enough not only to cover the cases in which *judgment* creditors are seeking to subject property which has been fraudulently transferred to the payment of the judgment, but also to those cases in which dispositions of property by an insolvent are claimed to be in fraud of *general* creditors. For it will be observed that in *Bayard vs. Hoffman* the bill was filed by the assignees for the benefit of general creditors, and the right of the court to interfere for the protection of such creditors appears to be recognized as being beyond dispute and to be founded on the court's power to assume jurisdiction in *all cases of fraud*.

It is true that in creditors' bills the general rule is well established that the creditor must show that he has exhausted his common law remedies before resorting to equity, and that this is generally done by obtaining a judgment, issuing an execution and having a return of *nulla bona* made.

Mr. Justice Field, in the case in 17 Wallace, already referred to, in speaking of the jurisdiction of courts of equity to reach property which cannot be levied upon by common law writs of execution, said: "It is a very ancient jurisdiction, but before its exercise the debt must be clear and undisputed, and there must exist some special circumstances requiring the interposition of the court to obtain possession of and bind the property."

But even in cases of creditors' bills, strictly so called, the rule that legal means for the collection of the debt must be first exhausted is not without exceptions. It will be sufficient, in support of this assertion, to refer again to the same opinion of Judge Field, who says: "Unless the suit relate to the estate of a deceased person, the debt must be established by some judicial proceeding, and it must *generally* be shown that legal means for its collection have been exhausted;" obviously implying that exceptional cases *may* exist in which the previous exhaustion of legal remedies is *not* necessary. The reports, moreover, will show not a few instances in which such exceptions have been recognized; and a decision of the Supreme Court of Missouri (*Turner vs. Adams*, 46 Mo. 95) holds that if it appear, in case of any ordinary creditors' bill, that an action at law would be unavailing, a sufficient foundation is laid for the interposition of equity.

But it must be borne in mind that those cases in which the rule of equity requiring the claim to be reduced to judgment and a return of an unsatisfied execution to be made, before the aid of a chancellor is invoked, are cases which fall within the first of the two classes above mentioned, and that if any judicial expressions are found indicating that the rule is to be extended to the second class, they will be discovered to be generally, if not universally, *obiter dicta*.

Moreover, the decision of Chancellor Kent, in *Bayard vs. Hoffman*, shows that the rule was not intended to be, and ought not to be, extended to cases in which the jurisdiction of the court is based on *fraud*, and the doctrine there laid

down is broad enough to cover cases outside of those where the creditors' claim is reduced to judgment.

It is believed, therefore, that the mischief spoken of in the resolution of the learned member of this Association, now under consideration, has been due not a little to a failure on the part of some courts to recognize the full scope of that doctrine, and to a failure to discriminate between creditors' bills, properly so called, and bills based on fraud. If the jurisdiction of courts of chancery in such cases is applied, as it is intended by its spirit to be applied, there would seem to be no reason why a fraudulent disposition of property should not everywhere be restrained or set aside at the suit of a simple contract creditor.

The general principles which govern that branch of remedial justice which is administered in courts of chancery are certainly broad enough to cover fraud of that description. If a fraud is established, either at common law or under the statutes of Elizabeth, and if the property which is sought to be fraudulently disposed of is within the grasp of a chancellor, surely, on a proper case being made out, no judge having general equity powers ought to hesitate to interfere to prevent the consummation of a fraud, even although his interference is asked for by a creditor whose claim has not been reduced to judgment. And to leave the matter to the general equity powers of courts of chancery would, in very many cases, it is submitted, be more likely to reach exact justice than if any iron-clad rules upon the subject were laid down, for a chancellor may always regulate the relief which he administers in such cases, and may refuse it if to grant it would be inequitable. He may also put the plaintiff to terms, so that the defendant may be protected by proper security from any wrongful interference with his property by a person who falsely claims to be his creditor.

Nor is it to be forgotten, that for the ordinary creditors' bill, it is not merely a previous judgment at law that is required. Such a judgment is valuable as a guarantee of the

right to a jury trial, but while it shows that a valid demand once existed, it does not show that it still exists. To prove this, we require the issue of an execution and its return unsatisfied. Were we to concede to a man's bond or note the same force against him that we give to a judgment, we should still lack the presumption that the bond or note remains unpaid, which we obtain from the sheriff's return of *nulla bona*.

And on the other hand, were we to make the chancellor inquire, in each case, whether the contract had been broken, that is, whether the plaintiff had an existing claim against the defendant, we should at once force upon him two quite independent issues, that of right and that of remedy, requiring different evidence, and which could not conveniently be tried together. In exceptional cases, he has this power now; in ordinary cases, it does not seem to us that it properly falls within his province. If there is to be a contest over the original cause of action, it had better take the usual shape of an action at law.

Independently of the general equity jurisdiction, and also of that particular branch of it which has been exercised through the medium of creditors' bills, it must also be borne in mind that the desired end, contemplated by the terms of the resolution, is very frequently attained under existing statutes in many states.

The general law of domestic attachment in very many cases is sufficient to guard against the fraudulent removal or other disposition of property. The cases in which such writs are issuable are usually those in which a debtor absconds or conceals himself with an intent to defraud his creditors, and while such proceedings are generally for the benefit of all creditors, and not for any one particular creditor, that feature of the law is not objectionable, for it is in conformity with the legal policy which underlies bankrupt and insolvent laws generally.

In addition to proceedings by domestic attachment, reference may also be had to those statutes which in many states allow actions to be begun by attachments directed against the

defendant's property. Such attachments lie in some states in every action at law, and in most states extend to cases in which the defendant is about to remove his property out of the jurisdiction of the court with the intent to defraud his creditors, or when the defendant fraudulently conceals property, or when he has assigned or is about to assign property with intent to defraud creditors, while not infrequently the remedial provisions of the law are extended to those cases in which the debt has been fraudulently contracted. Statutes of this kind are, it is submitted, sufficiently broad to protect the rights of creditors, and to widen them any further would, perhaps, tend to operate too harshly upon the business community, by subjecting alleged debtors not only to litigation, but also to having their property tied up on a mere pretence of the existence of a claim which may turn out, upon examination, to be utterly unfounded. It is common sense as well as common law that judgment should precede execution; and while it is desirable of course to prevent and guard against frauds upon the rights of creditors, it seems to us not wise to do so at the risk of violating this fundamental axiom in legal procedure.

Upon the whole, therefore, your committee are unable to find any sufficient reason for recommending any legislation upon the subject, and respectfully beg so to report.

SIMEON E. BALDWIN,
HENRY HITCHCOCK,
GEORGE T. BISPHAM,
Committee.

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW
REFORM ON IMPROVING METHODS OF LEGISLATION.*To the American Bar Association :*

The Committee on Jurisprudence and Law Reform beg leave to submit the following report in regard to improving our methods of legislation.

At the meeting of the Association in 1882, this resolution was adopted :

"Resolved, That in view of the growing evil of hasty and ill-considered legislation, and of defective phraseology in the statute law, this Association recommends the adoption by the several states of a permanent system by which the important duty of revising and maturing the acts introduced into the legislatures shall be intrusted to competent officers, either by the creation of special commissions or committees of revision, or by devolving the duty upon the attorney-general of the state."

A paper read at the meeting of the Association by Mr. Sterne, of New York, on "Slipshod Legislation," resulted, in 1885, in the adoption of this further resolution :

"Resolved, That the Committee on Jurisprudence and Law Reform be directed to prepare and submit to the Association, at its next annual meeting, the draft of such laws as they shall think suitable to carry into effect the recommendation of the resolution passed by the Association at its annual meeting in 1882, relating to commissions on legislation."

In obedience to this direction, your committee have prepared a draft, which is herewith submitted.

It has not seemed to them that it would be judicious to give the great power of clothing the intent of the legislature in words to the single hand of the attorney-general. Nor could they recommend a resort to the aid of the judiciary. We have been taught to regard the division of legislative from judicial functions as a fundamental part of our institutions.

The respect with which Americans regard the interpretation of statutes from the bench, and the ready acquiescence with which they receive as final its decisions as to their validity or invalidity, would be shaken if the same questions were or ought to have been considered and passed upon by the same tribunal before the action of the legislature. And, on the other hand, our people would never consent to give the judges a practical veto on proposed measures of legislation for the public good.

The form of the committee of revision, therefore, which is suggested in the draft act now submitted, is a simple joint standing committee of the legislature.

They should have, it seems to us, the assistance and the presence at their sessions of the attorney-general, or, in case of his engagements elsewhere, or other disability, of such counsel as they see necessary.

While such a committee could be expected to gain an excellent knowledge of all bills for public acts of general interest, they could give no close examination to the flood of ordinary private bills. These constitute the bulk of our legislation. Though designed to serve some private or local interest, each of them necessarily takes something away from the public, some appropriation, immunity or special privilege. Their number is steadily increasing, and the intended checks in our more recent state constitutions have but partially availed against the ingenuity of our profession. Three thousand more bills were introduced at the last session of Congress than at the corresponding session of the preceding Congress. Eleven hundred statutes were enacted, of which five-sixths were private laws. The President of the United States has felt called upon to give to many of these measures a closer scrutiny than has been usually demanded of his predecessors, and but for his repeated vetoes there would have been a hundred more.

It is wasteful, perhaps almost an unrepugnant method of government, to burden the chief executive with a minute supervision of all special legislation. There are others who

can do it as well, or better, and whose time is of less value to the public. There are treasury officials who should know better how to guard the treasury. There are some private interests likely to oppose, if they had the opportunity, whatever bills other private interests may be concerned in promoting. In our report of last year, we advised against any attempt by this body to formulate a statute which should aim to regulate the enactment of private laws. It seemed to us then, and it seems now, that the conditions of society vary too widely in our different states to make any one set of rules work well in all. We do, however, think it might be of service should the Association make some general declaration of its views, in outline, on this subject, without seeking to put them in the shape of a statute.

Your committee would recommend the adoption of the following resolutions:

1—*Resolved*, That in the opinion of the American Bar Association a fundamental change is necessary in the methods of enacting laws throughout the United States; that both in Congress and the legislative bodies of the states, laws are enacted without responsibility and without any such safeguards and methods as will insure responsibility for laws to be enacted, accuracy in their expression, their harmony with existing law, or to prevent the machinery of legislation from being used by sinister interests against the public weal.

2—*Resolved*, That in the opinion of the American Bar Association such constitutional amendments should be incorporated in the fundamental laws of the various states and of the United States as will create responsibility for public legislation and as will call into being some revisory power over proposed legislation other than the mere veto power of the president and of the governors.

3—*Resolved*, That the following draft act, if adopted in the several states, would in the judgment of the Association do much to remedy the evils in question; that the local councils in each state be requested to endeavor to secure its

passage therein ; and that the secretary print it in suitable form for legislative consideration, and furnish copies to each councillor, with a circular letter calling his attention to these resolutions.

"An Act to create a Joint Standing Committee for the Revision of Bills.

SECTION 1. Within the first ten days of every stated or special session of the [*here insert the proper name of the legislative body*], the president of the Senate shall appoint five senators and the speaker of the [*House*] shall appoint five members of the [*here insert House of Representatives, Assembly or other proper designation of the other house*], who shall together constitute a joint standing committee for the revision of bills. Said committee shall have power to require the assistance of the attorney-general and his presence at their sessions, or, in case of his inability to act, to employ counsel and to fix, subject to the written approval of the governor, the compensation to be paid such counsel.

SECTION 2. Every bill shall, after the same shall have passed the legislature, and before it is signed by the presiding officer of either house, be submitted to said joint committee for report thereon, and said committee shall report the same back to the house in which it originated. Said report shall contain such suggestions for amendments as may by said committee be regarded as necessary to make the bill express clearly the intention of the legislature, and harmonize with existing statutes and constitutional provisions, or shall state that in the opinion of the committee no amendments are necessary. Said bill shall then be considered and acted upon as to its final passage.

4—*And it is further Resolved*, That a fundamental division should be made between public and private legislation, and that the expediency of passing every local or special bill should be tried as a question of fact before an appropriate legislative committee, who may call in to sit with them experts upon the questions to which the bills relate, and may command

the assistance of counsel; and that the expenses of such trials should be borne wholly by the private and local interest promoting the bill; and that no private legislation should be considered except upon a petition to the legislature, previously filed for a reasonable time in the office of the secretary of the state, and accompanied by a bond with surety, to be filed therewith and approved by the attorney-general or state treasurer, to secure the payment of all expenses and fees incident to such legislation; which expenses and fees shall be such as the legislature shall by general law determine.

All of which is respectfully submitted.

SIMEON E. BALDWIN,
HENRY HITCHCOCK,
SIMON STERNE,
Committee.

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW
REFORM ON THE WHIPPING POST AS A PUNISHMENT
FOR CRIME.

To the American Bar Association:

At the annual meeting of the Association in 1885, the following resolution was adopted on motion of Mr. D. H. Chamberlain, of New York:

“In view of the fact that at least one state of the Union has uninterruptedly maintained the whipping post as a form of punishment for crime, that at least three other states have now adopted it in specified cases, while still other states are considering its adoption, and some, if not many persons and bodies of men, are urging its adoption as a punishment for certain classes of crimes—

“*Resolved*, That it be referred to the Committee on Jurisprudence and Law Reform to consider and report whether the whipping post or other similar modes of punishment are legitimate forms or instruments for the punishment of crime

consonant with the proper objects of the criminal law and jurisprudence, the welfare of American society and the civilization of the age; and if yea, in what cases and to what extent such forms or instruments may be applied and extended, with the respectful request that the said committee, if practicable, will present a report hereon at the next annual meeting of the Association."

Much thought and great pains have in recent years been bestowed upon the amendment of the criminal law and the improvement of prison discipline, chiefly in the direction of a more humane treatment of criminals. An enlightened civilization has demanded the disuse of punishments cruel in character or disproportioned to the offence. Branding and maiming belong to the age of the rack and the thumb-screw, and capital punishment is reserved only for the most heinous crimes. In the face of an enemy ever increasing in strength and in resources, the weapons with which society may defend itself have been steadily reduced in number and efficiency.

In determining whether we should seek most the good of the criminal, by providing for his reformation, or the welfare of the public, by preventing future crime, it is the condition of the criminal which seems to excite most sympathy. In the reaction against the terrible injustice that made death the punishment alike for the murderer and the pickpocket, there has been a tendency to rather confused and sentimental views of the rights of criminals. The protection extended to the accused on trial, the increasing difficulty of securing the conviction of notorious offenders, the limitations upon the punishment which may be inflicted, amount almost to a license to crime.

We have reason to be thankful that the refinements of the age have had their influence in the construction and management of our prisons. In place of the pestilent dungeons that disgraced England a century ago, our penitentiaries are generally models of neatness and good order, with every provision for the preservation of health that science can suggest.

The inmates, warmly and comfortably clad and amply provided with wholesome food, are often better supplied with the necessities of life than the honest poor in our large cities. They are, it is true, deprived of their liberty and compelled to work; but each year the character and the amount of the labor that can be demanded of them is being more restricted by the protests of those who are engaged in similar work outside. It seems to be only a question of time, when not "imprisonment at hard labor" but imprisonment with absolute idleness, will be the only punishment short of death that the law can impose. This is in fact the only punishment now for a large class of offences. It is impossible to provide employment for convicts serving short terms. They are generally ignorant of any handicraft than can be carried on in jail, and their sentences expire before they can be taught. Winter after winter the jails and reformatories in our large cities are filled with a growing class of people who have come to look upon a term of three months as a not altogether uncomfortable way of obtaining food and clothing, fuel and shelter, without effort and without expense. These are the men who in the spring are turned loose to tramp through the country, a terror to women in lonely farm houses, the state poorer for their winter's keep, while the only change wrought in them has been to make them more dangerous, because more healthy and vigorous brutes.

Every effort to strengthen the hand of the state to cope with the criminal classes encounters more or less opposition from mistaken friends of humanity.

At the last meeting of the Association a report was made by this committee recommending some provision by law for keeping under police supervision criminals whose repeated convictions showed that they were regularly enlisted in a warfare against society. Those who were present at that meeting will remember the excited and indignant protests that came from some members upon the reading of the report. The consideration of the matter was deferred until this meeting, and it is

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alluded to here only to show that the Association, in calling for reports on these questions, is fully alive to their gravity and importance, and that there is no danger that the considerations to be urged on any side will be overlooked.

That we may secure in behalf of society some of the sympathy that is so freely bestowed upon the criminal, let it be remembered that "the public" includes not only the honest who have been wronged, but those of infirm honesty who need a warning lest they be led into like offences. The large number of men who can be found spending a part of every twelve months in our city prisons, often serving out two or three sentences in a single year, is convincing proof that to the habitual criminal imprisonment alone has no deterrent effect. It is an interruption and an inconvenience that comes to be looked upon as one of the casualties to which he is exposed and is borne with stolid indifference. The census showed that in the year 1870 there were confined in the jails, work houses and penitentiaries in the United States 853 prisoners to every 1,000,000 of population. The census of 1880 shows 1069 prisoners for every 1,000,000 of people—an increase of nearly 25 per cent.

It is obvious therefore that one of the needs of the times is a punishment that will actually punish, some penalty which will be certain, conspicuous and severe—that will not only alarm the evil disposed, but which an outraged community can wait to see inflicted with confidence that it will be really punitive. There will then be less temptation to prevent the escape of an offender by another outrage against the already violated law. Flogging is such a punishment; repugnant certainly to our ideas of the treatment which a human being should receive, and degrading, but so good an authority as Mr. Archibald Forbes, whose familiarity with the English army began with his enlistment as a private in a cavalry troop, gives it as his opinion that it is a most valuable means of discipline with soldiers, and that some of the best men that he had known in the army had been flogged in the early part of

their service.. And granting all that may be said against it, the legislatures of more than one state have come to recognize that there is a class of crimes for which no other punishment is adequate—crimes that denote a degradation on the part of the offender that no flogging could deepen.

The frequent arrest of men for wife beating, and the difficulty of securing a conviction from the suffering and privations which the imprisonment of the husband entailed upon those dependent on him, induced the legislature of Maryland in 1882 to pass a law providing for the punishment by flogging and imprisonment for brutally assaulting and beating one's wife.

Criminal statistics are not always reliable, and much caution should be observed in drawing conclusions from them; but the records of the criminal court and the police of Baltimore city throw some light upon the subject by the workings of this law. During the first two or three years after its passage there was little change in the number of arrests for assaulting wives. Whether deterred by fear or by affection, the prosecutrix would not testify before the grand jury to a state of facts that justified a presentment for more than a simple assault, a grade of offence not punishable by flogging. The act went into effect in June, 1882. During that year, in a total of twenty-three thousand nine hundred and two arrests made by the police for all charges, one hundred and fifty-six were entered at the station-houses as "assault upon wives." In 1883 a negro was convicted under the act and sentenced to receive seven lashes. Numerous motions for new trials and appeals seemed to render it doubtful whether the law would ever be enforced, and the punishment was so light that it attracted little notice, yet the number of arrests for such assaults during this year fell from one hundred and fifty-six to one hundred and fifteen, the total number of arrests on all charges having meanwhile increased. There were no indictments under the flogging law during 1884, and in an increase of two thousand in the number of arrests for all crimes there was an increase

in the number of assaults upon wives from one hundred and fifteen to one hundred and thirty-one. The single conviction seemed to be forgotten. In 1885 a white man, who had been quite conspicuous in the police reports for various offences, was arrested, indicted and convicted of brutally assaulting his wife. He was sentenced to have twenty lashes laid on by the sheriff and to be confined for one year in jail. From the well-known character of the offender and the severity of the sentence the case attracted a good deal of attention. The sentence was duly carried out, and in this year (while the total number of arrests made by the police for all offences was steadily increasing) the cases of assaulting wives fell from one hundred and thirty-one to sixty-seven. The reports for the year 1886, so far as they are obtainable, show a still further decrease, and it is the estimate of the police authorities in Baltimore that the effect of this law has been to reduce the number of wife-beating cases at least one-half, and those now reported are of a much less serious character. If the flogging of one man has within eighteen months saved a hundred women from being beaten by their husbands, some good results must be conceded to the new law.

If flogging be an appropriate punishment for a man who has beaten his wife, it is difficult to see why it should not be applied to other cases of brutal assault upon weak and defenseless persons, or of assaults with slung-shots, brass-knuckles and such weapons as are found only in the hands of criminals. Its efficacy in putting a stop to garroting, a crime once prevalent in London, is within the recollection of all.

To the objection as to its degrading effect, it is sufficient to reply, that if the criminal is not deterred by the degradation of the act, the public need not be very sensitive lest he be degraded by the punishment. In the language of Dr. Arnold, of Rugby, "When it is impossible to find a true, manly sense of the degradation of guilt—where is the wisdom of encouraging a fantastic sense of the degradation of personal correction?" All crime is degrading and punishment should

emphasize that degradation. When a punishment has ceased to be regarded among criminals as either degrading or painful it is time to find another. We can be sure that flogging will always meet at least one of these requirements. The extension of this punishment should be gradual, and if the result, as shown by carefully collected statistics, confirms the conclusions which have been reached in Baltimore, its beneficial effect might be further extended.

While perhaps not strictly within the scope of the inquiry confided to this committee, we venture to call attention to a method of enforcing sentences to hard labor which is not open to the objection now made to the employment of convicts, and that is in building public roads. There is not a state in the Union whose prosperous development has not been greatly retarded by bad roads. In some of the states the public roads are kept in order by requiring every man to work on them a certain number of days in each year or to furnish a substitute. In other places a special tax is levied for this purpose. But everywhere it is recognized as a work of prime necessity and is a burden that bears directly upon every citizen and taxpayer. If the various counties were authorized to draw a certain proportion of able bodied convicts from the penitentiary, and to put them to work in building new roads, which but for such labor could not be built with the ordinary resources of the county, it would supply a universal want and in a direction where there is no danger of over-production. Convicts thus employed would be adding to the permanent wealth of the state; they would be engaged in arduous but healthy out of door labor, and they would be trained for that kind of work which can always be found in agricultural communities and of which there is rarely a supply equal to the demand. If it seemed good, a convict might be made to serve out his sentence at or near the scene of his crime, a better warning than incarceration in a penitentiary, where the offender and his punishment are soon forgotten. If his work was done faithfully in the sight of his old friends, he would more readily find employment when his sentence expired.

The counties could well afford to defray the additional expense which would be incurred for extra guards, and as the work would be done for the state and under the eye of the public, there would be no danger of the abuses which sometimes occur where convicts are hired to private contractors.

Without proposing any definite action in regard to the method of punishment thus suggested, your committee would recommend, in the matter of the whipping-post, the adoption of the following resolution:—

“Resolved, That in the opinion of the Association, the interests of society would be promoted by the general use of the whipping-post as a mode of punishment for wife-beating and other assaults on the weak and defenseless, or assaults committed with slung-shots, sand-bags, brass-knuckles or similar weapons.”

All of which is respectfully submitted.

SIMEON E. BALDWIN,
HENRY HITCHCOCK,
SKIPWITH WILMER.

Committee.

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW
REFORM ON UNIFORMITY OF PROCEEDINGS IN THE
SETTLEMENT OF ESTATES OF DECEDENTS
WHO HAVE LEFT PROPERTY IN
SEVERAL STATES.

To the American Bar Association:

Your Committee on Jurisprudence and Law Reform have considered the following resolution, adopted at your last annual meeting, namely:

“*Resolved*, That the Committee on Jurisprudence and Law Reform be requested to examine into and report some form of procedure and acts for the consideration of the legislatures of the several states, which will promote uniformity of proceedings in the settlement of estates of decedents who have left property in several states, particularly as to the matter of final accountability and marshalling the assets in one state for such final settlement,” and respectfully report as follows:

The subject matter of this resolution falls within a well-known head of private international law. No legislation on that subject would be sound in principle which failed to recognize the rules already laid down by courts and expounded by text writers of the highest authority, still less the cardinal rule that these principles, so far as they affect the subject under consideration, must be settled and applied, under our system of government, by each state for itself.

It is familiar law that, except as otherwise provided by the Constitution of the United States—as, in respect of the faith and credit to which the public acts, records and judgments of any state are entitled in every other—the several states of this Union are foreign to each other; and it is well settled that this rule applies in respect of the reciprocal relations of administrations taken out in the several United States. Wharton's Conflict of Laws, sec. 623 (citing), 2 Kent's Comm. 484; Hill *vs.* Tucker, 13 How. (U. S.) 358; McLean *vs.* Meek, 18 How. 16.

It is proper therefore to consider, first, what rules or principles pertinent to this head form part of the recognized body of general international law ; and, secondly—since the legislation of the several United States is based (with some exceptions not needful to be here considered) upon the English common law—what are the common law rules applicable thereto ?

The doctrine of general international law and the rules of the common law, in reference as well to the title of executors and administrators to the property in their charge as to their rights and responsibilities in respect thereof, whether they are appointed at the domicile of the decedent or in a foreign country, appear to be sufficiently established.

Mr. Justice Story lays down the general law substantially as follows :

“The title of an executor or administrator derived from administration granted at the domicile, cannot, *de jure*, extend as a matter of right beyond the territory of the government granting such administration and to movable property therein. His title to movables in foreign countries, if acknowledged at all, is acknowledged *ex comitate*, and of course subject to be modified or controlled by the laws of such country.” Story’s Conflict of Laws, sec. 512.

No executor or administrator can maintain suit in the courts of any country except one in which letters of administration have been granted to him, or (if a foreign administrator) except by express permission of its laws, under such conditions as they may prescribe. In general, it may be said that for a foreign executor or administrator to maintain suit in any country, he must obtain letters and give security therein.

“The right of a foreign executor or administrator to take out such new administration is usually admitted as matter of course, unless some special reason intervene to vary or control it, and the new administration is treated as merely ancillary or auxiliary to the original or foreign administration, so far as regards the collection of the effects and the proper distribution of them. Still, the new administration is made subservient to the rights

of creditors, legatees and distributees, who are resident within the country where it is granted, and the residuum is transmissible to the foreign country only when a final account has been settled in the proper tribunal where the ancillary administration is granted, upon the equitable principles adopted by its own law in the application and distribution of the assets found there." *Ib.* sec. 512.

On the same subject Story further says:

"Where there are different administrations granted in different countries, that is deemed the principal or primary administration which is granted in the country of the domicile of the deceased party; for the final distribution of his effects among his heirs or distributees has to be decided by the law of his domicile. Hence, any other administration which is granted in any other country is treated as in its nature ancillary merely, and is, as we have seen, generally held subordinate to the original administration. But each administration is nevertheless deemed so far independent of the others, that property received in one cannot be sued for in another, although it may at the moment be legally situated within the jurisdiction of the latter. Thus, if property is received by a foreign executor or administrator abroad, and it is afterwards remitted here, an executor or administrator appointed here cannot assert a claim to it here, either against the person in whose hands it might happen to be, or against the foreign executor or administrator. The only mode of reaching it, if necessary for the purposes of due administration in the foreign country, would be to require its transmission or possession, after all the claims against the foreign administration had been duly ascertained and settled." *Id.* sec. 518.

The reason of these rules is obvious, and is stated by Judge Story as follows:

"No nation is under any obligation to enforce foreign laws prejudicial to its own rights or to those of its own subjects. Persons domiciled and dying in one country are often deeply

indebted to foreign creditors living in other countries, where there are personal assets of the deceased. In such cases it would be a great hardship upon such creditors to allow the original executor or administrator to withdraw those funds from the foreign country without the payment of such debts, and thus leave the creditors to seek their remedy in the domicile of the original executor or administrator, and perhaps there to meet with obstructions and inequalities in the enforcement of their own rights from the peculiarities of the local law." *Ib.* sec. 512.

It is these peculiarities and differences in the local law of different states and countries which make difficult any uniform legislation such as contemplated by the resolution under consideration.

In reference to these differences, Judge Story further says:

"In relation to the mode of administering assets of executors and administrators there are in different countries very different regulations. The priority of debts, the order of payments, the marshalling of assets for this purpose, and in cases of insolvency, the mode of proof, as well as the mode of distribution, differs in different countries. (*Harvey vs. Richards*, 1 Mason, 421.) * * *

"What rule is to govern in the marshalling of the assets—the law of the domicile or the law of the *situs*? The established rule is that in regard to creditors the administration of assets of deceased persons is to be governed altogether by the law of the country where the executor or administrator acts, and from which he derives his authority to collect them, and not by that of the domicile of the deceased. The rule has been laid down with great clearness and force on many occasions.

"The ground upon which this doctrine has been established seems entirely satisfactory. Every nation, having a right to dispose of all the property actually situated within it, has (as has often been said) a right to protect its citizens against the inequalities of foreign laws which are injurious to their interests. The rule of a preference or of an equality in the payment

of debts, whether the one or the other course is adopted, is purely local in its nature, and can have no just claim to be admitted by any other nation, which in its own domestic arrangements pursues an opposite policy. And in a conflict between our own and foreign laws, the doctrine avowed by Huberus is merely reasonable, that we should prefer our own. '*In tali conflictu magis est, ut jus nostrum quam jus alienum servemus.*'" Ib. sec. 524-5.

The common law rules on this subject correspond with those of the general international law. They are very clearly summarized by Dr. Wharton, in substance as follows: (Wharton's Conflict of Laws, "Foreign Administrators," secs. 604-639.)

The common law rule is that personal property is technically charged with a decedent's debts, and the court of the *situs* regards an executor or administrator as a trustee to see that the property is applied to the uses which the law prescribes. Even a domestic executor or administrator cannot lawfully meddle with the decedent's property until authorized by the proper court. Nor can a foreign executor or administrator, under the authority of a foreign court, take possession of a decedent's property in countries subject to the English common law, without first obtaining authority from the courts of the *situs*. This doctrine is based, by courts administering the common law, upon the ground already stated, namely, that both movable and immovable property is primarily subject to the law of the territory where it is found, and an administrator or executor acts under the control of the sovereign granting his letters, and therefore cannot exercise his office in another sovereignty unless also authorized by that. The further consideration is also recognized that under any other rule domestic creditors might be injured by being forced into the courts of a foreign country, to be governed there by local laws which were not known to or contemplated by them when their contracts were made.

The doctrine that the assets of an ancillary administration

are primarily liable for debts due to citizens residing in that jurisdiction is uniformly maintained in the several states of this Union. It is thus tersely put by the Supreme Court of North Carolina:

"If a citizen of another country dies indebted to the citizens of this country, and owns personal property here, we appropriate it to the payment of creditors in the order prescribed by our law and not that of the domicile." *Carson vs. Oates*, 64 N. C. 115; *Maye vs. Maye*, 8 Iredell, N. C. Eq. 131.

So in the case of *Dawes vs. Head*, 3 Pick. 128, Chief Justice Parker discussed at length the same general question, holding that while the general rule is that an ancillary administrator should collect debts in his jurisdiction and forward the assets to the administrator at the domicile, yet this rule is subject to a just exception, growing out of the duty of every government to protect its own citizens in recovering their debts, so far as may be done without violating the rights of creditors in foreign countries, and that effects found in our jurisdiction and collected under our laws should be made answerable for debts due our own citizens, "in a just proportion to the whole estate of the deceased and all the claims upon it, whatever they may be."

Questions of greater difficulty arise in respect of the ancillary administration of insolvent estates. On this subject Dr. Wharton (*Conf. Laws*, sec. 621) differs from the view urged by Parker, C. J. (*Dawes vs. Head*, 3 Pick. 128), to the effect that in analogy to bankrupt procedure, creditors in the ancillary jurisdiction should not be paid in full, but only *pro rata* with creditors proving elsewhere. Wharton cites the decision in *Dunlap vs. Rogers*, 47 N. H. 287, as sustaining the view that the law of *situs* prevails over the law of domicile with regard to the rule of preferences, in case of insolvent estates, and contending that the assets of ancillary administration should go first to creditors in that jurisdiction, because they trusted the deceased on the faith of those assets; further pertinently suggesting that "if the insolvency of the owner of these goods

had been known before his death, these claims could have been made good by process of foreign attachment." His conclusion is (sec. 621):

"In America the decisions are positive that the law of *situs* is to prevail, which, of course, when the law of the *situs* and the law of the domicile conflict, is that of the ancillary administration granted at the spot where the property lies. But it is understood that under an ancillary administration not only domestic creditors but foreign creditors also may prove their debts."

Further discussing the subject of conflicts between domiciliary and ancillary administrations, Dr. Wharton lays down (secs. 627-640), as the result of the American decisions, certain propositions, of which the following may be noted here:

Personal property can be sold, transferred or assigned only by the administrator of the *situs*. A foreign administrator to make such transfer must take out ancillary letters in the *situs*.

An ancillary administrator is responsible, in the state granting his letters, only for the amount of assets in such state.

In the conflict between the law of the domicile and the law of the *situs*, as to priority of payment in cases of insolvency, the law of the *situs* prevails.

In case of solvency, the ancillary administrator should transmit the residuum to the administrator at the domicile for final distribution, but the court granting ancillary administration may order the residuum paid directly to the heirs or legatees at the domicile.

An ancillary administrator must satisfy in full the creditors of his jurisdiction, even though the principal administrators be insolvent.

It is obvious that any attempt to promote uniform legislation on this subject, such as contemplated by the resolution referred to your committee, must conform to the general principles and rules thus generally established. These rules are

founded upon the duty which each state owes primarily to its own citizens in respect of assets voluntarily brought by their owner within its jurisdiction. The only uniform legislation on this subject which can be reasonably expected must consist in their uniform application to the local laws peculiar to each state and to the rights which creditors in each state have acquired under those laws respectively. It is unavoidable that in applying these general doctrines of private international law to such rights, irregularities between creditors in different jurisdictions should continue to result from peculiarities and differences in the local law, such as already mentioned. Those peculiarities and differences have grown up in each state as the result of its past history. They are not merely matters of procedure, which could be changed with comparative ease. They are a part of its social and political system and traditions, and of its legislative policy through many years. The most complete theoretical demonstration of the superior equity or expediency of a different system would be of little avail in bringing about the abandonment of one sanctioned by habit and custom, and under which innumerable vested rights had grown up.

Illustrations of such differences between the laws of the several states are familiar to American lawyers, and none of them, perhaps, are more important than those which relate to such questions as arise in connection with the administration of estates, especially in cases of insolvency.

Some of them are mentioned by Judge Story (Conflict of Laws, sec. 524), as follows :

“In some countries all the debts stand in an equal rank and order, and in cases of insolvency the creditors are to be paid *pari passu*. In others there are certain classes of debts entitled to priority of demand, and they are therefore deemed privileged debts. Thus in England bond debts and judgment debts possess this privilege, and the like law exists in some of the states of this Union. (Smith *vs.* Union Bank, 5 Peters, 518.) Similar provisions may be found in the law of France

in favor of particular classes of creditors. On the other hand, in Massachusetts and in many other states of the Union, all debts except those due the Government possess an equal rank and are payable *pari passu*."

As further illustrating these differences in the local law of different states, in respect of the order of the payment of debts of a decedent, the following may be mentioned :

In Massachusetts, in the case of insolvent estates, and after payment of the expenses of the funeral and of the last sickness and the charges of administration, the debts are divided into four classes. *First*, debts entitled to preference under the laws of the United States. *Second*, public rates, taxes and excise duties. *Third*, wages, not exceeding \$100, for services rendered within twelve months preceding the death. *Fourth*, debts due to all other persons. Each of these classes must be paid in full before any succeeding class can share in the estate. No distinction is made, in respect of debts in the fourth class, between debts by simple contract or by specialty and debts of record, nor in respect of the time of presenting the claim. Mass. Pub. Stat. 1882, chap. 137.

In Georgia, the debts of the decedent, whether solvent or insolvent, are divided into eight classes, each class having priority over the preceding ones, and being as follows : *First*, the funeral expenses, including physician's bill and expenses of last sickness, and if the estate be solvent a suitable protection for the grave of the deceased. *Second*, the necessary expenses of administration, including a provision for the support of the family. *Third*, unpaid taxes or other debts due the state or the United States. *Fourth*, debts due by deceased as executor, administrator, guardian or trustee, in respect of property actually held and controlled by him as such. *Fifth*, judgment, mortgage or other liens to the extent of the property subject to the liens, and in the order of their priority. *Sixth*, debts due for rent. *Seventh*, all liquidated demands, including foreign judgments, dormant judgments, and all debts ascertained or acknowledged in writing. *Eighth*, open accounts. Georgia Code, 1882, sec. 2533.

In Iowa, provision is made for the payment: *First*, of the expenses of administration and charges of the last sickness and funeral; next, any allowance made by the court for the maintenance of the widow and minor children, after which debts are payable in four classes, in the following order: *First*, debts entitled to preference under the laws of the United States. *Second*, public rates and taxes. *Third*, claims filed within six months after first publication of executor's appointment. *Fourth*, all other debts, and all claims coming under the fourth class, are barred unless filed and proved within twelve months after notice of administration, unless pending in court, or peculiar circumstances entitle claimant to equitable relief. Iowa Code, 1880, title 16, chap. 3, "Estates of Decedents."

In New York, the executor or administrator is required to pay the debts of the deceased according to the following order of classes: *First*, debts entitled to a preference under the laws of the United States. *Second*, taxes upon decedent's estate assessed before his death. *Third*, judgments docketed and decrees enrolled against deceased, according to their priority. *Fourth*, all recognizances, bonds, notes, sealed instruments, notes, bills and unliquidated demands and accounts. No preference is allowed to any debt in any one class over any other debt in that class, except in case of prior judgments; but the surrogate may give a preference to the payment of rents due on leases held by the deceased over other claims in the fourth class. New York Code, 1882, chap. 6, art. ii, sec. 27, "Executors and Administrators."

In Kentucky, in the case of insolvent estates, after providing for funeral expenses and charges of administration, no preference is allowed except for claims against the deceased for funds committed to him as executor, administrator or guardian; but this preference is denied to such demands foreign to the state of Kentucky. All other debts and liabilities whatsoever are of equal dignity and paid ratably in the administration of the estate. Kentucky Code, 1883, chap. 39, art. ii, sec. 33, "Personal Representations."

In Texas, claims against an estate are divided into five classes, with priority accordingly. *First*, expenses of funeral and of last sickness. *Second*, charges of administration. *Third*, mortgage and other lien claims to the extent of the property subject to lien. *Fourth*, all claims legally exhibited within one year after letters are granted. *Fifth*, all claims legally exhibited after one year from date of letters granted. No distinction is made between record, specialty and simple contract debts, and no preference appears to be given to debts due the state or the United States as such. Texas Code, 1879, title 37, chap. 20, "Estates of Decedents."

In Missouri, demands against a decedent's estate are divided into six classes: *First*, funeral expenses. *Second*, expenses of last sickness, including servants' wages and medical attendance. *Third*, any debts, including taxes, due the state or any county or other municipal corporation; and this class of debts is to be paid without being presented to the probate court for allowance, which is required in all other cases. *Fourth*, judgments rendered against the deceased, or in pursuance of attachments levied upon his property, during his lifetime. *Fifth*, all other demands, of whatever description, legally exhibited against the estate, within one year after letters granted. *Sixth*, all demands thus exhibited after one year and within two years from date of letters granted. All demands not exhibited within two years are barred, except that in case of disability, two years after the removal of such disability is allowed. Rev. Stats. Missouri, 1879, sec. 184, "Executors and Administrators."

It is obvious that so long as the statutes of different states differ so widely in respect of the priority allowed to demands in their nature similar—such priority depending in some states upon the nature of the claim, in others also upon the time of its presentment, while in others all demands are treated alike—and while each state insists, and with good reason, upon the enforcement of its own laws in respect of assets within its jurisdiction, there can be no such thing as uniformity

of procedure in the settlement of estates of decedents leaving property in several states, so far as creditors residing in different states are concerned.

Other material differences are also found in the legislation of the several states in respect of the persons to whom letters of administration will be granted, and in the mode of proof, and conditions of payment, of debts. Thus in some states, as in Missouri and Kentucky, no non-resident can obtain letters testamentary or of administration, while in others, as in New York, Massachusetts and Georgia, a non-resident can take out letters upon the conditions prescribed by law. But these conditions vary in different states. Thus in New York the ancillary executor or administrator must give bond in double the total amount of debts due from deceased to residents of that state. (New York Code Civ. Proced., sec. 2699.) In Georgia no non-resident can administer upon the estate of a deceased citizen of Georgia unless he has himself a certain interest in the estate and gives resident security in double its amount; but a foreign executor, duly qualified, may sue in Georgia as though qualified there, and if found within the state may be sued in Georgia by creditors or legatees and made liable according to the law of the state where he was appointed. (*Johnson vs. Johnson*, 56 Ga. 326.) In some states, following the original common law practice, the executor is permitted to pay debts in their order as established by law, whenever proved to his own satisfaction—being of course responsible for good faith and due diligence; while in other states, as in Missouri, no debt is payable by an executor until after due proof and allowance by the probate court, except taxes and other debts due the state or municipality.

But it would be equally tedious and unprofitable to enumerate even the more important differences of the law of administration in the several states. The foregoing are mentioned only as emphasizing the statement already made, that your committee are not prepared to recommend action by this Association looking towards uniform legislation by the several

states in respect of the ordinary course of legislation or the allowance of demands against the estates of decedents. As already suggested, such adverse provisions arise from essential differences in the habits and customs of the people, in the traditions of legislation, and in the policy which, whether wisely or not, has been adopted in each state, for reasons sufficient to itself.

The question remains whether this Association should take any and what action looking towards legislation by the several states, in conformity with the general rules of international law and their several local statutes, but designed to provide uniform procedure in respect of the residuum or surplus of ancillary assets remaining in any case after the payment of debts preferred by the local law.

In this respect also differences are found in the legislation of different states.

In some states, as for example in Georgia, Iowa and Texas, there appears to be no express provision made by statute for the transfer of the surplus assets of the ancillary administration to the domicile. In other states the statutes provide, after payment by the ancillary administrator of the debts preferred by local law, for the transmission of the surplus to the executors or administrators at the domicile, or, in the discretion of the probate court, for its distribution directly among the next of kin or legatees.

It may be said in general that in all the states the assets of an ancillary administration are applied, in the case of solvent estates, first, to the payment in full of debts due the citizens of the state; the surplus being transmitted either under express statute provisions or by order of the proper court, in conformity to the general rules above stated, to the domicile.

But in the case of insolvent estates differences in local law again appear. It is in these cases that the difficulties and inequalities between creditors chiefly arise, the problem being to distribute equitably among all the creditors of the deceased, in just proportions, assets found insufficient to pay his debts in full, while also protecting resident creditors.

In New York, for example, the Code of Civil Procedure, under the head of "Surrogates' Courts" (ch. xviii, title iii, art. 7, secs. 2696-2701), provides expressly for granting ancillary letters of administration, upon proper application, to the foreign executor or administrator, being otherwise competent. For this purpose a citation is issued to all persons interested, including resident creditors by name, if known, and with notice to all unknown parties interested, and upon the hearing it is sought to ascertain the probable total amount of debts due to New York creditors. The ancillary administrator is then required to give bond in double the amount of such New York debts, and is accountable to the proper court in New York, like a domestic administrator. By sections 2700 and 2701 a very large discretion seems to be left to the court as to the disposition of the ancillary assets, according to circumstances, the general rule being, however, that all surplus personal assets shall be transmitted to the domicile, unless otherwise directed by the proper court in New York. It is also provided that such court may, in proper cases, direct the ancillary administrator to pay in full the debts of the deceased to creditors residing in New York; but with a further provision, apparently intended to cover the case of ancillary estates, namely:

"Or, if the amount of all the decedent's debts, here and elsewhere, exceeds the amount of all the decedent's personal property applicable thereto, to pay such a sum to each creditor residing within this state as equals that creditor's share of all the distributable assets; or, to distribute the same among the legatees or next to kin, or otherwise dispose of the same as justice requires."

On the other hand, the Kentucky statute ("Personal Representatives," chap. xxxix, art. 2, sec. 8) provides that if the personal estate of a non-resident decedent is insufficient to pay the Kentucky creditors,

"It shall be disposed of without preference, *pro rata*, among the creditors here and such of those elsewhere as prove and

demand their debts here, within two years after the appointment of a personal representative here. But there must be deducted from such foreign debts the amount received, or which can be received, by the foreign creditors from assets and estate in this commonwealth. And if the foreign assets and estate be sufficient to pay all the foreign debts, then no part of them shall be allowed or paid here."

The Massachusetts statute (Pub. Stat., 1882, "Estates of Deceased Persons," chap. 156) provides, in the case of solvent estates of non-residents, that after the payment of all debts for which the same is liable in Massachusetts, the residue may, in the discretion of the Probate Court, be either transmitted to the domicile or directly paid to next of kin or legatees. In the case of insolvent estates, the assets of non-residents found in Massachusetts are to be distributed, *pro rata*, "among all his creditors here and elsewhere;" but no part thereof is to be transmitted to the domicile until all creditors, citizens of Massachusetts, have received their proportion of the entire estate, wherever found, applicable to the payment of common creditors, if divided among all creditors *pro rata*, without preference, with the further express provision that no foreign creditor shall be paid out of assets found in Massachusetts until all Massachusetts creditors have received their just proportion as above.

The law of Missouri on this subject is substantially identical with that of Massachusetts, a separate article or chapter of the statute being in each of these states devoted to estates of decedent non-residents.

These different provisions illustrate the inherent and unavoidable difficulty of laying down any statutory rule with reference to the subject under consideration. It is very easy to direct by law that the assets of an insolvent shall be equitably and ratably distributed among his creditors, in just proportion to their claims or in just proportion to the entire assets, as compared with the entire amount of his debts. But in each case its own questions of fact and law arise, as well with

reference to the factors of distribution—the amount of the debts and their proper classification—as in respect of the different rules of priority applicable thereto. It may well be doubted whether the function of legislation in this regard is not fully performed when some general rule of distribution is laid down which shall indicate the equitable principles to be observed, but shall leave largely to the discretion of the proper tribunal, under the proof in each case, the application of those rules. Such, at least, is the conclusion reached by your committee.

In view of the considerations above presented, and in response to the instructions contained in the resolution adopted by the Association, the undersigned respectfully report their conclusions as follows :

1. That, inasmuch as questions relating to the classification and priority of demands against estates of decedents are questions of local law, to be solved by each state in conformity with its own legislative policy and traditions, and primarily with a view to the just protection of its own citizens, the undersigned do not recommend action to be taken by this Association looking towards uniform legislation by the several states on such questions.

2. That in view of the rules of law, in respect of the relations between principal and ancillary administrations, now generally recognized and established in the several states, either by express statutes or by accepted judicial decisions, the undersigned do not recommend action by this Association looking towards legislation by the several states on that subject.

3. That in respect of the administration of the assets of non-resident decedents, the application thereof to the payment of debts and the transmission to the domicile of the surplus thereof, if any, the undersigned are of opinion that uniform legislation by the several states is desirable. Such legislation, however, to be in conformity with the rules above mentioned, and to prescribe in the case of insolvent estates some equitable rule for the application of such assets, in just proportion to

the payment of all the debts of the decedent, but leaving sufficient discretion to the proper tribunal as to the application of such rule to the facts of each case.

4. That the statute provisions on this subject now in force in Massachusetts and Missouri seem, in general, well adapted to the end above mentioned.

A copy of the Missouri statute concerning the administration of the estates of non-residents is herewith submitted.

Respectfully submitted.

SIMEON E. BALDWIN.

HENRY HITCHCOCK.

Committee.

MISSOURI.

Rev. Stat., 1879, vol. 1, art. xii, p. 40; "Estates of non-residents and persons absent from the state."

SECTION 268. *Estates of non-residents, how administered.*—When administration shall be taken in this state on the estate of any person who, at the time of his decease, was an inhabitant of any other state or country, his real estate found here, after the payment of his debts, shall be disposed of according to his last will, if he left any, duly executed according to the laws of this state; and his personal estate according to his last will, if he left any, duly executed according to the laws of his domicile; and if there should be no such will, his real estate shall descend according to the laws of this state, and his personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant.

SECTION 269. *Id. How distributed or transmitted on final settlement.*—Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this state, the residue of the personal estate, if any, may be distributed and disposed of, in the manner aforesaid, by the court in which the estate is settled; or it may be transmitted

to the executor or administrator, if there be any, in the state or country where the deceased had his domicile, as the court, under the circumstances, shall think best.

SECTION 270. *Id. Where deceased dies insolvent.*—If such deceased person die insolvent, his estate found in this state shall, as far as practicable, be so disposed of that all his creditors, here and elsewhere, may receive an equal share in proportion to their respective debts.

SECTION 271. *Id. Estate not to be transmitted until resident creditors are paid pro rata share.*—To this end his estate shall not be transmitted to the foreign executor or administrator until his creditors, who are citizens of this state, shall have received their just proportions that would be due to them if the whole of the estate of the deceased, wherever found, were divided among all the said creditors, in proportion to their respective debts, without preferring one species of debt to another.

SECTION 272. *Id. Citizens to be first paid.*—In such case no creditor, not being a citizen of this state, shall be paid out of the assets found here until those who are citizens shall have received their just proportions, as provided in the preceding section.

SECTION 273. *Id. Other creditors may be paid from residue.*—If there be any residue after such payment to the citizens of this state, the same may be paid to any other creditors who shall duly have proved their debts here in proportion to the amount due to each of them respectively.

SECTION 274. *None to be paid more than pro rata share of entire estate.*—No one shall receive more than would be due to him if the whole estate were divided ratably amongst all the creditors.

SECTION 275. *Id. Balance, how disposed of.*—The balance, if any, may be transmitted to the foreign executor or administrator; or, if there be none such, it shall, after the expiration of three years from the appointment of the administrator, be distributed ratably among all the creditors, citizens and others, who shall have proved their debts in this state.

REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION
AND REMEDIAL PROCEDURE ON EXISTING EVILS IN
THE SYSTEM OF REPORTING THE DECISIONS
OF COURTS.

The Committee on Judicial Administration and Remedial Procedure, in compliance with the instructions of the Association (p. 39) at the last annual meeting, that the question as to the existing evils in the system of reporting the decisions of courts be presented in proper form for discussion at this meeting, respectfully submit the following *resolution* for that purpose :

Resolved, That while this Association records its approval of the present tendency of judges to write short opinions, especially in cases turning on the facts and those which are not useful as precedents, and in the present state of the law doubts the utility of referring to the decisions of inferior courts as precedents, it does not deem it practicable to interfere by legislation in prohibiting or limiting the publication of any class of reports of judicial decisions; and that the evils resulting from the great and increasing volume of judiciary law must be dealt and remedied in some other way than by legislative restrictions of absolute freedom in the publication of adjudged cases.

For the committee,

RUFUS KING,
Chairman.

August 18, 1886.

REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION
AND REMEDIAL PROCEDURE ON INDETERMINATE
SENTENCES OF CONVICTED CRIMINALS.

The Committee on Judicial Administration and Remedial Procedure have investigated the subject of "Indeterminate Sentences of Convicted Criminals," as instructed at the last session of the Association, and now present the following report as to the nature of this procedure and the extent to which it has been adopted in this country.

What are called "indeterminate sentences" of criminals consist in the authority conferred by law, upon courts, to pass a mere sentence of imprisonment upon the convict, without defining the term or limit, and leaving to the prison authorities the power and discretion in that respect which has heretofore been exercised by the courts. If this power is not exercised by the prison authorities, the prisoner will then be discharged at the expiration of the maximum term of imprisonment prescribed by law for his crime.

The advantages claimed for the procedure are, that by this means the graduation of the punishment to the case and character of the convict can be more justly settled, and that a stronger hold is afforded for his reformation.

This practice, so far as the committee can ascertain, has been adopted in the states of New York and Ohio only. As the Ohio statute has been taken mainly from that which was adopted in New York, April 12, 1877, a copy of the latter is annexed to this report for reference by those who may not have access to the laws of these states.

New York has a state reformatory, at Elmira, besides several penitentiaries, and the statute of that state authorizing indeterminate sentences applies only to the particular class of convicts who are punishable by confinement in the reformatory. The indeterminate sentence is imperative as to all prisoners in

the reformatory, but is subject to the control of the managers, who may grant either temporary leave of absence on parol or an absolute release.

The powers and conditions upon which each of these privileges may be granted are defined in the act, and in substance are as follows :

Rules and regulations must be framed by the managers, under which prisoners, by a course of good conduct, may as a reward obtain permits for going outside of the reformatory (many of them, as the statistics show, being abroad in other states) but upon prescribed conditions. While outside they are to be deemed in the legal custody and control of the managers as prisoners and subject at any time to be taken and re-imprisoned upon their order in writing. This, if certified by their clerk, is made a sufficient warrant for their arrest by any officer named in it, and all officers are required to execute such orders.

The managers are required to maintain such control over all prisoners committed to their custody as will prevent them from committing crime, best secure their self support and accomplish their reformation. And as a means of maintaining this control, the tenth section of the New York statute provides that the managers may appoint suitable persons, in any part of the state, to supervise the prisoners who are paroled, and perform such duties as the managers may require or direct.

For the release of convicts, by the reformatory board, the New York statute requires that the managers shall keep a system of marks, or other uniform plan, for determining what credit each prisoner shall earn by "good demeanor, diligence in labor and study and results accomplished," after deducting charges for "derelection, negligences and offences."

Upon this record increased privileges may be gained, and whenever it appears to the managers that there is "strong or reasonable probability" that a prisoner will not violate the law, and that his release is not incompatible with the welfare of society, they may release him absolutely from imprisonment.

This release and the grounds for it they are to certify to the governor, and he may thereupon, in his discretion, restore such person to citizenship.

But no petition or application of any kind for a release can be entertained by the managers.

The provisions of the Ohio statute, passed March 24, 1884, and amended April 14, 1884, and May 4, 1885, correspond in general with those of New York, but in two or three points are materially different.

The courts in Ohio may, in their discretion, pass indeterminate sentences upon convicts who are punishable by imprisonment in the penitentiary, and for any crime except murder in the first or second degree.

In such cases the managers of the penitentiary (a board of five members appointed by the governor and senate) have authority to grant parols and absolute releases, as in New York, but not until after the convict shall have served at least the minimum term of punishment prescribed by the statute for his crime, nor in any case where the prisoner has suffered a previous conviction for felony. The Ohio statute contains other severe discriminations against what are denominated in it as "habitual criminals," which are worthy of attention.

The most material difference is the total omission to provide measures for securing the supervision of paroled prisoners, and this departure from the very mild provision of the New York statute, in this respect, seems unaccountable.

The committee were further instructed to add to this report their recommendations on the subject.

They are reluctant, however, to offer to the Association any recommendations upon an experiment where so little is as yet ascertained as to its practical operation.

The experiment of confiding to a board of directors what looks so much like the pardoning power as the absolute release, which they may confer under both of the statutes above mentioned, is one as to which we may well hesitate. The mere power of granting parols was deemed by the

attorney-general of Ohio sufficient ground for a proceeding by *quo warranto* to test the validity of this act. (The State ex rel. etc. *vs.* Peters and others, 43 Ohio St. R. 629.) But the court held that the mere power of paroling was not such an interference with the executive or judicial powers conferred on these departments by the Constitution of Ohio. The court as to this point relied upon decisions made in 42 Penn. St. R. 448, and 13 Grey, 618. The case, as will be seen, did not involve the other and larger power of absolute release which is granted in the New York and Ohio statutes, but the reasoning of the court is such as might have sustained this as well as the power of paroling. Still this point was not in the case.

But in respect to the power of paroling convicts the committee cannot forbear the expression of serious doubt whether, even under the New York statute, anything like the protection which is due to society is secured by an adequate provision for the supervision of the convict while out on parol. Safe and close custody has immemorially been the essential safeguard against the criminal. The parol so far destroys it.

The Ohio law is loose and crude upon this vital point. The New York law has capabilities which, in the hands of a competent and efficient board of managers, may render the experiment safe and tolerable. It must be admitted, however, that the dispersion of these criminals all over the Union, which their records show, is not unlike the emptying of European prisons on our shores. The extent of this abuse in the administration of the New York Reformatory will be more readily appreciated from the fact that of the total number of two thousand three hundred and sixty one "indefinites," who in September, 1885, had been committed to this prison, one thousand two hundred and fifty had been paroled, and that two hundred and sixty-four of this number had been sent out of the state and distributed among twenty-four of the other states and territories, with some small favors to Canada, England, Ireland, Germany and the high seas.

On this point the committee beg leave, in conclusion, to call attention to the "ticket-of-leave" system established under the English laws of penal servitude.

It originated under the authority of the governors of the penal colonies, and was first sanctioned by Parliament, so far as the committee are aware, by an Act 5 Geo. IV, chap. 84.

Subsequently, when transportation for crime was abolished by the Acts 16, 17 Vict., chap. 99 (A. D. 1853), and 20, 21 Vict., chap. 3, and the system of home prisons established, the "license" or ticket-of-leave system was adopted by Parliament, in those acts, as a method of rewarding convicts for good conduct during imprisonment. By further acts passed in 1864, 1871 and 1879, the system has been brought gradually into its present efficacy, worthy of careful examination, but too much extended to be described in the limits of this paper.

In the point now under consideration these acts are particularly well guarded.

The conditions of the license, instead of being left entirely to the discretion of the board of managers, as in New York and Ohio, are prescribed by Parliament and must be endorsed upon the license and no change made in them except by authority of Parliament; 34, 35 Vict., chap. 112, sec. 4.

Among them is one that the prisoner shall not only be limited to a specific residence, but that he shall not change to another, even in the same police district, without notice to the chief of police or constabulary; and if transferred to another district, must at once report to the chief of that district. Once every month he must report personally to the chief of police or such person as he appoints. If he be reasonably suspected of any offence, or violation of either of the conditions of the license, or if it appears to the chief of police that he is getting his livelihood by dishonest means, he may be arrested by him without warrant, and on summary conviction before any competent magistrate, returned to the proper prison to serve out his original sentence.

The English system makes no provision for release, leaving

that to the pardoning power, but, as will be seen, gives no such facilities as are afforded by our American statutes for making the way of the transgressor soft.

The committee respectfully recommend the adoption of the following resolution :

Resolved, That in the judgment of this Association the system of liberating convicts on parole requires better safeguards than those which are provided by the legislation in the states of New York and Ohio on that subject, so as to secure the retention of paroled prisoners more effectually within the supervision and control of the prison authorities, and keeping them strictly within the limits of their respective states.

The dispersion of criminals by the authorities of a state in other states or countries should never be permitted.

RUFUS KING,
GEO. W. BIDDLE,
HENRY WISE GARNETT,
R. D. BENEDICT,
Committee.

Indeterminate Sentence Law of New York.

Chapter 173. An act in relation to the imprisonment of convicts in the New York State Reformatory, at Elmira, and the government and release of such convicts by the managers. Passed April 23, 1877, three-fifths being present.

The people of the state of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any person who shall be convicted of an offence punishable by imprisonment in the New York State Reformatory, and who, upon such conviction, shall be sentenced to imprisonment therein, shall be imprisoned according to this act and not otherwise.

SECTION 2. Every sentence to the reformatory of a person hereafter convicted of a felony or other crime, shall be a general sentence to imprisonment in the New York State Reformatory, at Elmira, and the courts of this state imposing such sentence shall not fix or limit the duration thereof. The terms of such imprisonment of any person so convicted and sentenced shall be terminated by the managers of the reformatory, as authorized by this act, but such imprisonment shall not exceed the maximum term provided by law for the crime for which the prisoner was convicted and sentenced.

SECTION 3. Every clerk of any court by which a criminal shall be sentenced to the New York State Reformatory shall furnish to the officer having such in charge a record containing a copy of the indictment and of the plea, the names and residences of the justices presiding at the trial, also of the jurors and of the witnesses sworn on the trial, a full copy of the testimony, and of the charge of the court, the verdict, the sentence pronounced and the date thereof, which record, duly certified by the clerk, under his hand and official seal, may be

used as evidence against such criminal in any proceeding taken by him for a release from imprisonment by *habeas corpus* or otherwise. A copy of the testimony taken on the trial, and of the charge of the court, shall be furnished to the clerk for the purposes of this act by the stenographer acting upon the trial, or if no stenographer be present, by the district-attorney of the county. The stenographer or district-attorney furnishing such a copy, and the county clerk, shall be entitled to such compensation, in each case in which they shall perform the duties required by this act, as shall be certified to be just by the presiding judge at the trial, and shall be paid by the county in which the trial is had, as part of the court expenses. The clerk shall also, upon any such conviction and sentence, forthwith transmit to the superintendent of the reformatory notice thereof.

SECTION 4. Upon the receipt of such notice the superintendent, in person, or a subordinate officer of the reformatory, by said superintendent for that purpose duly delegated, shall proceed to the place of trial and conviction, and the sheriff or keeper of the jail having the custody of the convict shall deliver him to such superintendent or delegated officer, with the record of his trial and conviction as made up by the clerk, and such convict shall thereupon be conveyed to the reformatory, the expenses of which conveyance shall be a charge against and paid out of the earnings or other funds of the reformatory.

SECTION 5. The board of managers shall have power to transfer temporarily, with the written consent of the superintendent of prisons, to either of the state prisons, or in case any prisoner shall become insane, to the convict asylum at Auburn, any prisoner who, subsequent to his committal, shall be shown to have been, at the time of his conviction, more than thirty years of age, or to have been previously convicted of crime, and may also so transfer any apparently incorrigible prisoner whose presence in the reformatory appears to be seriously detrimental to the well-being of the institution. And

such managers may, by written requisition, require the return to the reformatory of any person who may have been so transferred. The said board of managers shall also have power to establish rules and regulations under which prisoners within the reformatory may be allowed to go upon parole outside of the reformatory buildings and inclosure, but to remain, while on parole, in the legal custody and under the control of the board of managers, and subject at any time to be taken back within the inclosure of said reformatory; and full power to enforce such rules and regulations and to re-take and reimprison any convict so upon parole, is hereby conferred upon said board, whose written order, certified by its secretary, shall be a sufficient warrant for all officers named in it to authorize such officers to return to actual custody any conditionally released or paroled prisoner; and it is hereby made the duty of all officers to execute said order the same as ordinary criminal process. The said board of managers shall also have power to make all rules and regulations necessary and proper for the employment, discipline, instruction, education, removal and temporary or conditional release and return as aforesaid of all the convicts in said reformatory.

SECTION 6. Whenever there is unoccupied room in the reformatory, the board of managers may make requisition upon the superintendent of prisons, who shall select such number as is required by such requisition from among the youthful, well-behaved and most promising convicts in the state prisons, and transfer them to the reformatory for education and treatment under the rules and regulations thereof. And the board of managers are hereby authorized to receive and retain, during the term of their sentence to the state prison, such prisoners so transferred, and the laws applicable to convicts in state prisons, as far as they relate to the commutation of imprisonment for good conduct, shall be applicable to said convicts when transferred under this section.

SECTION 7. It shall be the duty of said board of managers to maintain such control over all prisoners committed to their

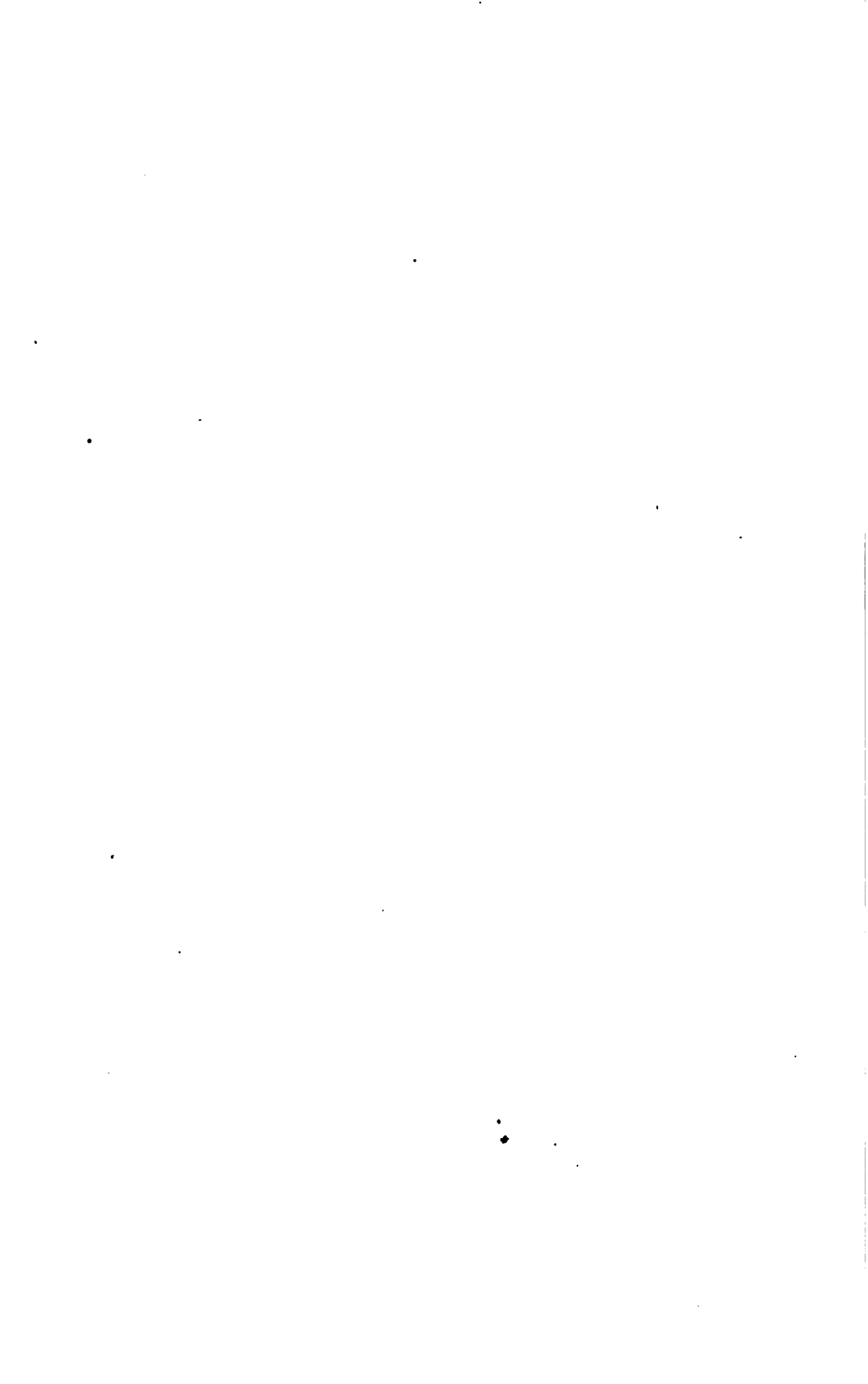
custody as shall prevent them from committing crime, best secure their self-support and accomplish their reformation. When any prisoner shall be received into the reformatory upon direct sentence thereto, they shall cause to be entered in a register the date of such admission, the name, age, nativity, nationality, with such other facts as may be ascertained, of parentage, of early social influences, as seem to indicate the constitutional and acquired defects and tendencies of the prisoner; and based upon these, an estimate of the then present condition of the prisoner and the best probable plan of treatment. Upon such register shall be entered, quarter-yearly or oftener, minutes of observed improvement or deterioration of character, and notes as to methods and treatment employed; also all orders or alterations affecting the standing or situation of such prisoner, the circumstances of the final release and any subsequent facts of the personal history which may be brought to their knowledge.

SECTION 8. The board of managers shall, under a system of marks or otherwise, fix upon a uniform plan under which they shall determine what number of marks, or what credit shall be earned by each prisoner sentenced under the provisions of this act, as the condition of increased privileges, or of release from their control, which system shall be subject to revision from time to time. Each prisoner so sentenced shall be credited for good demeanor, diligence in labor and study, and for results accomplished, and be charged for dereliction, negligences and offences. An abstract of the record in the case of each prisoner remaining under control of the said board of managers shall be made up semi-annually, considered by the managers at a regular meeting, and be filed with the secretary of state, which abstract will show the date of admission, the age, the then present situation, whether in the reformatory, state prison, asylum or elsewhere, whether any and how much progress of improvement has been made, and the reason for release or continued custody, as the case may be. The managers shall establish rules and regulations by

which the standing of each prisoner's account of marks or credits shall be made known to him as often as once a month, and oftener if he shall at any time request it, and may make provision by which any prisoner may see and converse with some one of said managers during every month. When it appears to the said managers that there is a strong or reasonable probability that any prisoner will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, then they shall issue to such prisoner an absolute release from imprisonment, and shall certify the fact of such release and the grounds thereof to the governor, and the governor may thereupon, in his discretion, restore such person to citizenship. But no petition or other form of application for the release of any prisoner shall be entertained by the managers. Nothing herein contained shall be construed to impair the power of the governor to grant a pardon or commutation in any case.

SECTION 9. If, through oversight or otherwise, any person be sentenced to imprisonment in the said reformatory for a definite period of time, said sentence shall not for that reason be void, but the person so sentenced shall be entitled to the benefit and subject to the liabilities of this act, in the same manner and to the same extent as if the sentence had been in the terms required by section 2 of this act, and in such case said managers shall deliver to such offender a copy of this act, and written information of his relation to said managers.

SECTION 10. Said managers may appoint suitable persons in any part of the state charged with the duty of supervising prisoners who are released on parole, and who shall perform such other lawful duties as may be required of them by the managers; and such persons shall be subject to direction and removal by said managers, and shall be paid for the duties actually performed under the direction of said managers, a reasonable compensation for their services and expenses, and the same shall be a charge upon and paid from the earnings or other funds of the reformatory.



REPORT OF THE SPECIAL COMMITTEE ON DELAY AND
UNCERTAINTY IN JUDICIAL ADMINISTRATION.

To the American Bar Association :

The SPECIAL COMMITTEE, on the Delay and Uncertainty in Judicial Administration, have the honor to make this their SECOND REPORT, as follows :

The committee, as originally appointed in 1884, consisted of the first two signers of the present report and three other gentlemen, one of whom died before acting and the others went out of the country before the report was made. The two members remaining made a report, concluding with fourteen recommendations, nine of which were adopted without modification ; two were adopted with modification ; two were stricken out, with the consent of the committee ; and one was postponed to the next meeting. Those adopted were the following :

I.—Summary judgment should be allowed upon a negotiable instrument or other obligation to pay a definite sum of money at a definite time, unless an order of a judge be obtained, upon positive affidavit and reasonable notice to the opposite party, allowing the defendant, on terms, to interpose a defense.

II.—In an ordinary law-suit the methods of procedure should be simple and direct, without a single unnecessary distinction or detail ; and whatever can be done out of court, such as the statement of claim and defense, should be in writing and delivered between the parties or their attorneys without waiting for the sitting of a judge.

III.—Trials before courts, whether with or without juries, should be shortened, by stricter discipline, closer adherence to the precise issue, less irrelevant and redundant testimony, fewer debates and no personal altercation.

IV.—Trials before referees should be limited in duration, by order made at the time of appointment.

VI.—The record of a trial in every court, in which official stenographers are in attendance, should contain short-hand notes of all oral testimony, which notes, if the court shall so order, shall be written out in long-hand and filed with the clerk; but only such parts should be copied and sent to an appellate court as are relevant to the point to be discussed on the appeal, and, if more be sent, the party sending it should be made to pay into court a sum fixed by the appellate court, by way of penalty.

VII.—A motion for or against a provisional remedy should be decided within a fixed number of days, and if not so decided the remedy should fail. In all other cases a decision within a fixed period should be required of every judge and every court, except a court of last resort.

VIII.—The ordering of new trials should be restricted to cases where it is apparent that injustice has been done.

IX.—Whenever a court of first instance adjourns for a term leaving unfinished business, the executive should be not only authorized but required to commission one or more persons, so many as may be necessary, to act as judges for the time being and finish the business. Such temporary judges should be commissioned in all courts except the court of last resort.

XI.—The time allowed for appealing should be much shortened. One month, or at most two, should seem to be enough in all cases.

XII.—Greater attention must be paid to the selection of judges, without which no other reform, however good in itself, can succeed.

XIV.—Statistics of the litigation, in the courts of the United-States and of each state, should be collected and published yearly, that the people may know what business has been done and what is waiting to be done.

The recommendation, which was postponed to the present meeting, was the following: "The law itself should be re-

duced, so far as possible, to the form of a statute." This will be first considered.

REDUCTION OF THE LAW TO STATUTORY FORM.

The committee as reorganized have considered this recommendation anew and readopt it. The reasons given by the original committee leave little to be added. There are now in this country but two ways of making law, and these are legislation and litigation. We prefer legislation. Whether there was ever, at any time in any country, reason for judge-made law, it would be profitless to discuss. We affirm that there is not now, in this country, any reason for it whatever. It is illogical, unsafe and contrary to the American theory of government.

The recommendation of the report would not commit the Association to any particular scheme of codification or to any form of statute. But we are unwilling to believe that the wit of man is so feeble and the English language so defective, that rules of law which are capable of expression in judicial decisions cannot be expressed in statutes. The existing statute books themselves show the fallacy of such an opinion. A large portion of the law is already codified. What we insist upon is that the uncoded portion of the common law, so far as it is settled by judicial decisions, should be enacted by the legislature in as brief a compass as possible and published for the use of judges and lawyers, and for the information of the people. We repel the idea, that the reduction of the law, so far as practicable, to the form of a statute would check the natural growth of law. We ask that the processes of legislation be reformed and improved, and that the making of the rules of law, by which all the members of the body politic must be governed, be not left to the shifting decisions of judges in private litigations between A and B or B and C, which may perchance be given in collusive suits between private parties, represented by incompetent counsel, the public having no opportunity and no right to be heard or consulted

as to the propriety of the rule which the court declares. Then the people should be enabled to know beforehand, so far as possible, by what law they are to regulate their conduct, instead of having their rights disposed of as may happen, and in point of fact does not infrequently happen, under the system of judge-made law, by a judicial decision which in its operation upon the case in which it was decided, and upon other existing transactions or conditions of the same kind, has all the injurious effects of a retrospective law. If the law is reduced to the form of a statute the office of the judicial tribunals will be, for the most part, *interpretation* instead of *legislation*. Judicial legislation will measurably cease and the office of making laws will be left to that department of the government which was created for that purpose. We repeat, that the real question is whether the American people should be governed by legislation or by litigation.

The precedents cited in the briefs of counsel and the opinions of courts are simply statements of the conclusions upon law and fact in particular cases. The point of the decision was not an abstract rule of law, but the right of A or the right of B in the circumstances developed on the trial. The rule is inferred from the reasoning, or, if there be no opinion delivered, from the mere fact of a decision one way or the other. When, then we say that our common law is a law of precedents we mean that it is a law of *inferences* from precedents. The inferences may be correctly drawn or they may be drawn incorrectly. It would hardly be probable that two persons should draw precisely the same inferences. Hence arises one of the reasons for a code that is to settle the inferences. In no other way can any stability be given to common, that is unwritten law, for the next precedent may tend as much to confuse as to enlighten the reader upon the just inference to be drawn from the previous one. Precedent is heaped on precedent, that is, precedent in explanation of precedent, which is the same as to say the inference from the first precedent is attempted to be explained by inference from the next

precedent, and so on, in a congeries of inferences from a congeries of precedents.

It is related of Lord Mansfield, that he advised a friend, who was not a lawyer, going out to be governor and chancellor in one of the dependencies of England, not to give reasons for his judgments, "for," said he, "your judgment will probably be right but your reasons will certainly be wrong." What sort of a common law would this chancellor make? That kind of law is a series of inferences from reasons given for decisions, but, says the great chief-justice, make the decisions but give no reasons, for they will certainly be wrong. If this advice were good and the colonial judge were a sample of other judges, the common law would be deemed a series of wrong reasons for right judgments. It is amusing to hear the criticisms sometimes made upon particular articles or sections of a proposed code; that this section, or that section, is not the law, meaning that it is not a just inference from the reasoning of a particular precedent. This critic thinks so, but the next critic thinks differently, and among a dozen lawyers there may be a dozen opinions. Which is right and which is wrong it is the function of the legislature to declare.

An unwritten or inaccessible law is un-American. The law of the legislature, as distinguished from the law of the courts, is the necessary sequence of the American doctrine, that the functions of government should be apportioned between three great departments, legislative, executive and judicial. Our practice is inconsistent with our theory. Indirect methods, subterfuges and shams are not in accord with our professions or our traditions. Whatever we do, we at least pretend to do not covertly but openly. When we want a constitution of government we write it. When we want a treaty with another nation we write it. If we seek to make plainer our relations with the other nations of the earth, we do not leave those relations to the decisions of the tribunals, but we put them in writing as plain as possible that they may not be misunderstood. So we did when the great Frederick and the

greater Franklin came together to frame the most enlightened treaty ever made; so we did when in 1871 we dealt with England for the depredations of the "Alabama." We did not create the Tribunal of Geneva to pass upon questions of international law, as they lay in the usages of nations and the precedents of the tribunals delivered from time to time through ages. We did not send counsel to Switzerland to read from Grotius and Vattel and the long line of publicists and judges, called the sages of the law, but we first agreed with our adversary about the law, and put into writing the rules by which the tribunal was to judge, and then and not till then we called the tribunal itself into being, not to judge by the inner light which is supposed to burn in the breasts of judges, or by the innumerable books which the jurists of all ages have placed upon our groaning shelves, but by few rules of law, framed with deliberation, written with care and stamped with authority.

What have we done about the rules of navigation? There lay the rules of the common law from the earliest ages, from the days of the sea-kings, from Wisbuy and Oleron, from the time when the Colossus of Rhodes bestrode the gate-way of eastern commerce. Why did not modern commerce content itself with them? There were decisions in English courts and in our own; why not work with them? Why have rules of navigation in these our days been framed, written in all tongues, posted in the log books of mariners, displayed in insurance offices and wherever merchants most do congregate?

One of the trite threadbare arguments against codification is the history of the statute of frauds. See here, the anti-codifiers say; here is a little statute of a few lines, and behold what a host of questions and decisions has it given rise to. Well, would you have had no such statute? Would you repeal it? Was that English judge demented who declared that every line of it was worth a subsidy? The Constitution of the United States is, according to these anti-codifiers, another awful example of the evils of written law. See, they

exclaim, what volumes of commentaries from the Federalist down, what crowds of decisions on that little code made in these hundred years. Well, again, would you undo it? One is tempted to ask of these gentlemen, do you take us to be children, that you would foist upon us such nonsense?

These men forget how it appears in the whole course of English and American history, that when a victory for freedom was won, in the establishment of great rights or duties, they were written down, that they might never be mistaken or disowned. So it was with Magna-Charta, so it was with every petition or bill of rights which for so many ages the people of England struggled for and the crown resisted. Even so long ago as 1771, when it was proposed in England upon trials for libel to substitute for judge-made law the written law of Parliament, Burke, in answer to the objection, that the matter should be left with the judges, declared that, "If so, very ill would the purchase of Magna-Charta have merited the deluge of blood which was shed in order to have the body of English privileges defined by a positive written law."

It is not necessary, however, to go back to the past century or to past decades for evidence or illustration. We are speaking of our own country and our own time and we say we need a code. We will not stop to inquire whether the people who lived in England or America before the American Revolution needed it, but we say, that we who live here now need it. The literature of this country, and the same may be said of England, demands it. However strong may be the body of lawyers, and they are strong, and it is for the common weal that they should be strong, for they are one of the great conservative forces of society, they are not so strong as the people, the men of letters, the thinkers and the writers, who are bound by no ties or prejudices of profession or classes, but who reason and speculate, study history and compare systems, and reach their own conclusions from facts they themselves have learned; men, for example, like Bacon, Hallam and Macaulay. If the

lawyers can stand up against this incoming tide of reasoners, writers and speakers, they are stronger than we think they are.

We forget, moreover, that our condition is different from that of England, and that even if codification were not good for that country, as we think it undoubtedly would be, yet it would be good for this. For do we not inhabit separate states, eight and thirty in number, each with its separate system of procedure, to say nothing of substantive laws? And is not the number of the states, and the number of those who people them, increasing with an ever accelerated current? We shall have, says Bancroft, at the end of a hundred years more, five hundred millions of people, and he might have prophesied that we shall have a hundred states. Is it conceivable that we shall then endure the judge-made law, or the law of precedents, whichever it may be called, of the multitudinous judges of those hundred states? A code of federal procedure is already recommended by a justice of the Supreme Court of the Union and a bill for such a code was introduced in the Senate at the last session of Congress.

The resolution XIII, which was laid over at the last meeting of the Association, does not declare that the law should be reduced to a *code*; it merely declares that it "should be reduced, so far as possible, to the form of a statute." We think, indeed, that the resolution would in the end lead to a code, as a logical sequence, because we think that so much of the law can be reduced to statute as to result in a code. Some persons, however, may be of opinion that it is possible to reduce only a small portion of the common law to a statutory form, not enough to entitle the product to the name of code. Then if only a few of the rules can be so reduced, the work is easier done; if many, the work is the more necessary to be done. They who do not think a code attainable may nevertheless with consistency adopt the resolution as a just one. None can vote against it, but he who thinks that not a single rule of the common law, though quite possible

to be reduced to the form of a statute, should be placed in the statute book, not even the law of bills, cheques and promissory notes, as has been done in England within the last four years. If **any** lawyer is willing to stand upon that opinion, we leave him to the people. Let him say to them, if he will, "I know very well that we can write down, in the form of enactments, many, or at least some, of the rules of law, which are the measures of your rights and duties, but we will not do it or have it done; we prefer to tell you from time to time what they are, as you call upon us at our offices or in the courts."

Here is the conclusion of the whole matter. The common law is made by the lawyers, from time to time; lawyers on the bench and lawyers at the bar. They say, or rather many of them say, such is their proper function. Some, modest men that they are, call themselves a trained body of experts just fitted for the work; others, more modest, insist only that theirs is the true method of generating law. A free people who have framed their institutions, on purpose to keep the three departments of government, the legislative, executive, and judicial, separate and independent of each other, will not always submit to this assumption. They will not sit quietly by and see their laws made by the lawyers. The seventy thousand in the United States, though a host counted by themselves, are yet but a handful counted by the side of sixty millions of their countrymen. These are considerations which we, members of this Association, and all members of our profession, everywhere in the country, may profitably take to heart.

NEW SUBJECTS.

The action of the Association in recommitting the original resolution on delay and uncertainty to the committee, appears to us to imply not only that the recommendations adopted at the last meeting are to stand, and the one postponed to this meeting to be further considered, but that any other matter relating to the general subject of the original resolution may

be considered by the committee. Upon this understanding of the scope of their inquiries, they appointed their junior member secretary, and sent out a circular to members of the Association, to the judges of the highest courts, federal and state, and to other prominent members of the profession, containing a number of questions upon topics which it was proposed to consider. A large number of replies to this circular have been received, which have been copied or condensed, and the result, together with the circular itself, will be found in the appendix to this report.

Proceeding then to the discussion of the new subjects mentioned in the circular, we will follow the order there taken.

First:

THE SYSTEM OF TRIAL BY JURY.

Great dissatisfaction exists with trial by jury. This dissatisfaction appears to be increasing with the general advance in popular intelligence. The magazines and the newspapers have for several years teemed with criticisms upon what is called the jury system. These criticisms have called forth defenders of the system, and the result is that the subject is undergoing a very thorough and thoughtful discussion. We do not propose so much to make our own arguments for or against trial by jury, as to call attention to its history, the changes it has undergone in different places, the views entertained by its advocates and defenders, the arguments generally used on both sides, and to recommend improvements in the selection of jurors and the conduct of the trials by them. During the first fifty years of the American Union a tendency was discernible to enlarge the right of trial by jury and to insert guarantees of this right in the constitutions, federal and state. The right was pushed to extreme limits. The power of the jury was constantly enlarged and the power of the judge correspondingly curtailed, until in some jurisdictions, as in Missouri and several other western states, the judge in a jury trial is little more than a moderator in a town meeting, whose duty it is to see that the rules of debate are strictly observed.

The system has passed through several notable phases. In the first, or original phase, the idea of trial by jury was a trial by *witnesses* to the fact. The jury consisted of twelve men of the vicinage, that is, of the immediate vicinity where the act in dispute was alleged to have been done, and they decided upon their own knowledge and neighborhood rumor. That was the original idea of our rude Saxon ancestors. This idea has undergone such a change that now the fact of a juror having personal knowledge of the transaction is generally regarded as a sufficient ground of challenge, and the fact of his having formed or expressed an opinion either upon personal knowledge, upon newspaper report or upon common rumor, if the opinion be of such a character as to render it improbable that he could come to an unbiased decision, is a legal ground of challenge. So that, what in the early stages of the institution was a necessary qualification in the juror is now a legal disqualification. Nevertheless, an inveterate conservatism has clung to the system during the course of the centuries which have witnessed this transformation in its fundamental idea and principle. It is deeply imbedded in popular affection and in popular prejudice. A superstitious veneration attaches to the number twelve. In the popular imagination there is something akin to magic in it. No bill of indictment can be returned in most jurisdictions by a less number of grand jurors than twelve; and, except where recent constitutions have made an innovation, no verdict in the most petty civil cause returned by less than twelve men is good, unless the defect is waived by the party against whom it is rendered; while in a trial for felony the right to have the verdict returned by exactly twelve men is a right which the accused, according to some decisions, is incapable of waiving.

The arguments against the system are generally the following: The plan of committing the decision of the facts in litigation to a large number of men drawn from the body of the community, inexperienced in the sifting of evidence, unacquainted with the artifices of advocacy, is, when considered by

itself, one of the most clumsy and artificial that can be devised. Worse tribunals have existed, it is true, in the course of civilized history. The Anglo-American trial by jury is one degree better than the trial by the Athenian Areopagus. A trial by a limited assembly of men elected for the particular occasion is preferable to a trial before the general public, just as a representative body is superior for legislation to an assembly of the entire mass of freemen or voters. The general superiority of a trial before a judge who is trained to the sifting of evidence, experienced in the habits of witnesses and strongly disciplined in mind, over a trial before an accidental body of twelve men, taken temporarily from their business, acting under a feeling of restraint and awkwardness which springs from being placed in a new situation, suffering in their private affairs and anxious to return to them, must be apparent upon the least reflection. Observe the difference between the methods employed by advocates where the trial is before a jury and where it is before a judge. The former is very commonly, where advocates of a certain class are employed, characterized by attudinizing before the jury; disingenuous offers of incompetent evidence which it is known beforehand the judge will exclude and which evidence the counsel could not produce if it were admitted; side bar remarks, looks and gestures; attempts to excite sympathy on the one hand or prejudice on the other. An argument before a jury is in many cases of such a character that it would be an insult if delivered to a judge sitting as a trier of the facts. The experience of civilized men has convinced them that the highest success results from a division of labor, whereby men become highly expert in particular departments of human effort. Accordingly, in order to achieve the best results in any given department of human effort, the particular work must be committed to those who are experts in such work. This rule is universal; but it is ignored in the system of trial by jury. That system, when analyzed and applied to complicated transactions or controversies, is as absurd as it

would be for the owner of a ship, which required a crew of twelve men, to choose for that purpose a lawyer, a doctor, a clergyman, a merchant, a banker, a carpenter, a shoemaker, a farmer, a capitalist, a vagrant, a saloon-keeper and an astronomer; and, putting this motley crew under the direction of one man experienced in navigation but unacquainted with the particular ship, should turn it adrift and trust to Divine Providence for a safe voyage.

We have in our judicial system the two forms of trial, trial by judge and trial by jury, standing side by side and undergoing constant comparison with each other. In causes for equitable relief, in cases of admiralty and divorce and such as belonged to the ancient ecclesiastical court in England, the trial is by the judge. In civil actions for damages, the trial is by jury. Now, whatever arguments may be put forth concerning the merits and demerits of these two systems as they thus stand side by side inviting comparison, this conclusion cannot be gainsaid, that there is no such fundamental difference between the jurisdiction of the different courts, no such difference in the questions of fact brought before them in civil suits, as to produce any essential or necessary difference in the methods by which either tribunal must proceed to ascertain controverted facts. In point of law the rules of evidence are in general the same in the different classes of judicatories. This being so, it can scarcely be possible in the nature of things, when the wide difference in the character and experience of the triers of the facts in these two classes of judicatories is considered, that the results achieved by those of one class are not better than the results achieved by those of the other class. That is a proposition which public opinion ought to face and consider. Now, if the results, or in so far as the results of trial by judge are better than the results of trial by jury, the good of society requires that trial by judge be extended and that trial by jury be curtailed. On the other hand, if the results of trial by jury are better than those of trial by judge, the good of society requires that trial by jury be extended and that trial

by judge be curtailed. The system which a sufficient experience has shown to be better than the other ought to displace the other. If the voice of the bar could determine the matter, there is scarcely a doubt what that voice would be. In those states where, except in certain proceedings, a choice is given to litigants to bring their actions in chancery or at law, as for instance in the state of Tennessee, the courts of law are neglected and the courts of chancery are overrun. Trial by judge is a favorite mode of trial with good lawyers, and trial by jury with poor lawyers, with disingenuous lawyers, with lawyers who resort to low subterfuges and to unconscionable means of obtaining the desired result in a pending litigation. A litigant who has a good cause which he feels sure is founded in justice will generally prefer to submit it to a judge of candor and reputation than to submit it to the accidents of a jury trial. If the grounds of the popular affection for trial by jury were analyzed, it is believed that the most substantial reason for preferring this tribunal is that there is in every community a class of people who do not favor a rigid execution of the laws. They love the jury system because this mode of trial is a negative upon the execution of the laws in what are deemed to be hard cases; because it is a sort of popular pardoning power, where twelve men, in violation of their oaths, may render a verdict against the law and the evidence. This affectionate regard for jury trial is most conspicuously displayed in cases where murder is committed to avenge wrongs done against family or domestic honor, and where, according to a loose public judgment, no punishment ought to be inflicted, although the crime is denounced by the law of the land. Instead of committing the dispensation of pardon exclusively to the executive where it is lodged by the constitution, it is by this system committed also to twelve men of the neighborhood, who dispense it in violation of the oaths which they take at the commencement of the trial. It may well be believed that if the reason why so many continue to prefer this clumsy and otherwise unsatisfactory mode of

ascertaining the facts in litigation were carefully analyzed, one reason would be found to be that the trial by jury *is a popular negative upon the execution of the laws*. This reason is never expressed in so many words, but it is continually implied by eulogists of the system in the statement that in every period of English history the jury has been found a bulwark against executive tyranny. That is no doubt true. The jury has been found a bulwark against executive tyranny in former times, and it has also been found a bulwark against executive effort in later times to enforce the laws. In our system of government, federal and state, where the powers of government are carefully divided, where the executive power is committed to magistrates chosen for short periods of time, whose duties are defined by written constitutions and checked by a powerful judiciary, the necessity for upholding this species of trial upon the idea that it is a bulwark against executive tyranny does not in fact exist.

Such are the arguments against the system. On the other hand, we are confronted with the facts that the institution has been established for many ages, is grounded in the affections of the people, gives them an interest and an insight regarding the workings of their government, is a bulwark against the partiality of judges, and generally does lead to just verdicts, when held before competent judges.

These observations are made, not with any expectation that trial by jury even in civil cases will be done away with in our day. It is not possible now, it may never be possible, even in such cases, to discontinue it altogether. But the observations may be useful in considering the formation of the jury and the regulation of its functions, and those of the judge, and in limiting the cases in which it may be required; in all which respects the different states do now very much differ.

In some of the New England states the jurors, for both the grand and trial juries, are chosen annually in the town meeting, and are generally persons of some training for such a function. In other states the list commonly includes the

greater portion of males of full age. The exemptions which may be claimed are many in number. It so happens, therefore, that, what with the admissions and what with the exemptions, juries do not in general consist of the citizens best qualified for the service. If there be such diversity in the qualifications of juries in the different states, there is greater in the regulation of their functions. The English system rests upon the idea that it is the office of the judge to declare the law and the office of the jury to find the facts. But at the same time the inexperience of the jury is aided by the experience of the judge, in so far that the judge not only declares the law to them, but he sums up the evidence and gives them his opinion of its weight and bearing, cautioning them at the same time that they are not bound by his opinion, except as to questions of law; in other words, under this system it is the office of the judge to *instruct* the jury as to the law, and it is his *privilege* to *advise* them as to the facts. Where this practice exists, a judge of candor and ability, who attends to the evidence given upon the trial, will have little difficulty in bringing the minds of the jury to a just result. This practice exists in the courts of England, in the courts of some of the older states of the American Union, and in the courts of the United States. If the jury system is to retain any of its ancient favor, the power of intelligent and experienced judges to control its workings, so as to secure just results, must be maintained, where it still exists, in full force and vigor, and restored where it has been curtailed or denied. But in the courts of many of the newer states of the Union, the judge is prohibited, by constitutional ordinances or by statutes, from giving the jury the benefit of his opinion upon questions of fact. In some states the law has gone even beyond this. The judge is prohibited from summing up the evidence, lest in doing so he should give to the jury intimations of his opinion as to what their verdict should be. Nay, more, he is prohibited from charging them orally, but is required to give them instructions in writing, and in one state at least the

law has gone to the extreme of requiring the judge to charge the jury in writing before the counsel argue the issues of fact to them. In that state the judge delivers a hypothetical written charge, composed in most cases of paragraphs handed to him by either counsel, though he has the power to draw written instructions of his own motion. These instructions are read to the jury, are then handed to them and are taken by them to their room upon their retirement to consider of their verdict.

The rule which requires the judge to charge the jury only in writing came into vogue at a period before the advent of the court stenographer. The real object of the rule was to enable counsel to get a fair bill of exceptions. But now, notwithstanding the intervention of the stenographer, the rule is maintained, and we have often this incongruous result, that the evidence is delivered to the jury by witnesses orally or read to them from depositions, but they are not allowed to take these depositions with them to the jury room; while the charge of the judge applying the law to this evidence must be given in writing so that they can take it to their room and consider it. Now, it is just as important that the jury should take with them the evidence in writing as it is that they should take with them the judge's instructions as to the law in writing. It is just as essential that they should have the evidence before their eyes in making up their verdict as to have the instructions applying the law to the evidence. But we have sometimes in the same jurisdiction this inconsistency, that it is ground for a new trial if the judge allows the jury to take with them on their retirement the written depositions which have been read in the cause, or if he fails to instruct them in writing so that they can take with them to their retirement the instructions which he gives them. The presence of a stenographer renders it no longer necessary for the judge to reduce his instructions to writing, in order that the unsuccessful party may have them fairly embodied in his exceptions; and it should seem that the statutes which make it imperative

upon the judge to charge the jury in writing should be qualified by the proviso that this should not be necessary where there is an official stenographer by whom the charge, if delivered orally, may be reduced to writing, or where the parties may have provided themselves by agreement with a stenographer to report the trial.

The most valuable safeguards against judicial carelessness, oppression or corruption have been found in the rule which requires the judge, at least in important cases, to give his reasons for decisions in writing. This practice is known to be so important a check upon hasty and perfunctory work by appellate courts, that in some of the states the judges of these courts are prohibited from rendering oral decisions. Moreover, the experience of the legal profession justifies the statement that the decisions of courts presided over by the most eminent judges have comparatively little weight when not supported by satisfactory reasons publicly given. A rule which has been found so important a safeguard to the carefulness and integrity of judges must be an equally important safeguard to the carefulness and integrity of juries; and it is a just conclusion that if juries could be required to give their reasons for their verdicts, a great many of the anomalous, absurd and unjust verdicts which are returned by them would not be returned. The public judgment has become so thoroughly impressed with this fact that in several of the States statutes now exist under which it is the privilege of the judge or of either party to require the jury to answer certain interrogatories applicable to the issue as well as to return a general verdict. The statutes generally provide that if the general verdict is inconsistent with the answers to the interrogatories, a new trial shall be granted or that the particular answers shall control the general verdict. In other words, the jury are not allowed under this system to find that certain facts have or have not existed, and then to return a controlling general verdict according to affection, passion, prejudice or caprice; or, as often happens, according to loose views of

justice and benevolence entertained by the jurors. This new practice, wherever introduced, is said to have been attended with favorable results. It rests upon the obvious propriety of obliging the jury to tell how they found particular facts material to the general result, which is equivalent to requiring them to give *reasons* for their general conclusion. The practice, if it serves no other purpose, has the effect of requiring greater care on the part of the jury, of obliging them to analyze the evidence and to state their conclusions upon different elements of it in writing, a practice which is necessarily favorable to a correct result.

During the period when public opinion tended in an extravagant degree towards establishing the absolute independence of the jury, a doctrine sprang up in some of the States which was frequently called the "*scintilla* doctrine." This went so far that, if there was a bare *scintilla* or spark of evidence to support the verdict, the judge ought not to disturb it. The rule was applied more strictly in the appellate courts, when urged to set aside verdicts as contrary to the evidence. In some jurisdictions the doctrine assumed a form like this: that the trial court possessed a power over the verdict larger than the appellate court, because the trial judge had heard the witnesses and observed their manner of giving testimony, and for the further reason that, living in the community where the trial had taken place, he might reasonably be supposed to have some knowledge of the standing and the character of the witnesses. In those jurisdictions, therefore, it was assumed that the trial judge would not set aside the verdict unless it was clearly unsupported by evidence, and that the appellate court would not set aside a verdict, as being against the weight of the evidence, if there was a *scintilla* of evidence to support it.

The question frequently arises in jury trials, under what circumstances the judge should submit the case to the jury at all; and hence in those jurisdictions where the *scintilla* doctrine prevailed, it has been the practice of the judge to submit the cause to the jury where there was a *scintilla* of evidence which,

if believed, would entitle them to render a verdict for the plaintiff, even for nominal damages. But, with the decay of the scintilla doctrine, a tendency is developed to adopt the sounder rule that the judge will not in any case submit the cause to the jury where he would feel bound, if the verdict were rendered against his views, to set it aside on a motion for new trial.

We think that a proper check upon the incompetency, the mistakes, the prejudices and the caprice of juries is found in the rule that the judge ought not to submit any civil controversy to them unless the evidence is of such a character as to leave the issue of fact to be decided fairly in doubt; that is to say, unless in his opinion fair minded men might disagree or hesitate as to what decision ought to be rendered upon it; and if the judge disregarding this rule has inadvertently submitted the cause to the jury, he should not hesitate to apply the rule in determining whether the verdict should be allowed to stand. If the verdict is, in the opinion of the trial judge or the appellate court, clearly opposed to the weight of evidence, it should be set aside by the former on a motion for a new trial, or by the latter on appeal where the evidence is fully presented by a bill of exceptions, and the appellate court is authorized to review the facts.

The proposition that it is desirable to give the judge power to sum up the evidence orally and to advise the jury as to the facts, involves, it is true, a necessary implication against the capacity of the jury to perform the work which the law commits to them. For if the jury are more capable of deciding the facts than the judge, they do not need the aid of his opinion in deciding them. This is true, and it is also true that trial by jury is hedged about with a great many rules of evidence and procedure, which involve an implication against the sufficiency of the system. Some of the rules of evidence which have grown up under it would never have come into existence under the system of trial by judge. In trials before judges alone the presumption is that they have sense enough

to determine the value of evidence; before juries the presumption is that sometimes they have not sense enough to determine it. Then, in regard to the conduct of juries, they are encompassed with restrictions which have never been thought necessary in the case of a judge where he sits as the trier of the facts in the most important controversies. Separating from each other and from the officer in charge of them; listening to outside remarks of the parties, or their witnesses, or of third persons, concerning the cause on trial; in some cases receiving at the hands of the successful party what between neighbor and neighbor or citizen and citizen, are usually regarded as no more than the ordinary courtesies of life; these, or most of these, under varying rules and in different classes of trials, are regarded as reasons for setting aside the verdict and granting a new trial. In causes of equitable cognizance, in cases of admiralty or divorce, no principles exist which supply such rules to the conduct of the judge who sits as the trier of the facts. This jury of twelve "good and lawful men" are invested with a sort of sanctity in the popular estimation, and yet they are so little sanctified in legal estimation that the law has found it necessary to environ them with restrictions, which would be found humiliating and insulting if imposed upon a judge.

The truth is, that the jury is one of those institutions, not infrequent in the history of the race, which being established for one purpose, and upon one theory, are maintained for a different purpose, and upon an altogether different theory. As the best tribunal for the trial of civil causes indiscriminately, it is not now defensible; if defended at all it must be upon other grounds, such as protecting suitors against the partiality of judges, or accustoming the people to the consideration of judicial questions or for other reasons already mentioned. No man in his senses would think of leaving the decision of a question of fact that may unfortunately have arisen between him and his neighbor to twelve men chosen by lot out of the mass of citizens; but when considering how best to

protect the rights of all the people, at all times and under all circumstances of tyranny, of prejudice or of panic, he might reason thus, let us establish an intelligent and independent judiciary to decide between man and man, but let us at the same time give to a suitor the right at his option in certain cases to call in the aid of a chosen body of his fellow citizens.

For conclusions on this head, to be submitted for the consideration of the Association, we recommend the following, in addition to the eighth adopted last year,

I.—The greatest possible care should be exercised in the selection of jurors, much greater than is now exercised in most of the states. No person should be put upon the jury list who is not known to be a person of probity, intelligence and good repute. It should be borne in mind, that a juror is in a very important sense a judge, though a temporary one, and something like the care required in the selection of permanent judges should be required in the selection of jurors.

II.—A jury should not be called in civil cases unless demanded by one of the parties.

III.—It should be made the duty of the judge in every case civil or criminal to instruct the jury as to the law, and it should be his right in the exercise of a sound discretion, to advise them as to the facts, cautioning them at the same time that they are not bound by his opinion except as to matters of law.

IV.—The judge should not be required to reduce his instructions upon matter of law to writing, where a competent stenographer, appointed under a provision of law or selected by the parties, is present, by whom such instructions may be taken down as delivered.

V.—The trial court on a motion for new trial, or the appellate court on appeal upon a question of fact, should set aside a

verdict where it plainly appears to be unsupported by substantial evidence of a credible character, or to be contrary to the weight of trustworthy evidence.

VI.—The practice of submitting to juries special interrogatories upon the material or controlling facts in issue, and of disregarding their general verdict when inconsistent with their answers to such interrogatories, ought to be extended.

♦ THE RELIEF OF APPELLATE COURTS.

Last year's report of our committee discussed this subject and made these recommendations, which appeared to meet the approval of the Association: "The Constitution should provide for one permanent court of last resort in the state, to which appeals should be so limited as not to exceed the capacity of the court to hear and decide them as they arise. Temporary commissions should not be resorted to in courts of last resort."

We have little now to say by way of argument beyond what was said in that report, but it may not be uninteresting to see what expedients have been adopted in some of the states. Some of them have created a court composed of six judges sitting in two sections. This experiment has been tried in Tennessee and in California. The result is believed to have been unsatisfactory. It is said that the two sections have assumed too much the character of separate courts. Even where both sections consulted upon every case, the minds of the judges of one section were with difficulty brought to bear upon the business of the other section to any considerable extent. Overburdened with the business of their own section, their tendency would be to neglect the business of the other. The results had been that each section assumed to a considerable extent the character of an independent court, and the decisions of the two sections sometimes clashed with each other, thus introducing confusion and uncertainty into the law, at the expense of a dispatch of the public business.

In some states the experiment has been tried of assisting the Supreme Court temporarily in disposing of its arrears by creating a commission of appeal or a Supreme Court commission, to sit separately from the Supreme Court, to hear arguments in causes, and to decide them as is done in the Supreme Court. In some of the States this experiment has taken the form of creating a commission whose powers were apparently merely advisory, the judges hearing arguments and writing opinions, to be submitted to the Supreme Court and, if approved by the Supreme Court, to be reported as the opinions of the Supreme Court and to have the like effect as precedents. Devices of this character have little to recommend them to the favor of this Association. Where these commissions are created by the legislature their constitutionality is more than doubtful, unless the constitution in direct terms has conferred upon the legislature the power to alter the constitution of the Supreme Court. Where the Supreme Court is created by the constitution, the number of its judges prescribed, their compensation fixed and their duties declared, and where no power is vested in the legislature to alter the constitution of this tribunal, upon what ground such power can be claimed for the legislature is not perceived.

Passing by the question of the validity of such a contrivance, it should further be observed that it is a mere makeshift, and, while able lawyers have been sometimes found willing to occupy seats upon these temporary tribunals, they have been generally unwilling to abandon their practice for the short period of service and the doubtful honor which such a seat would give them.

We believe that the soundest plan for relieving the highest appellate courts is the establishment of intermediate appellate courts, and the division of appellate causes among them according to the subjects of the litigation or the amount in controversy, and that appeals upon questions of fact should be extremely limited.

We recommend the following resolution :

The law should provide for the settlement of the facts in the court of first instance, subject, perhaps, to one appeal, and the courts of first instance should be so constituted as to enable them in general to settle satisfactorily the issues of fact.

DELAY AND UNCERTAINTY IN THE ADMINISTRATION OF
CRIMINAL JUSTICE.

In this respect a marked contrast exists between most of the American states and Great Britain and her colonies. If a capital felony is committed in England or Canada, and the felon is immediately apprehended, his execution under sentence of the law will generally take place, in the ordinary course of justice, within a period varying from two to four months from the commission of the crime. In some of the American states years intervene between the commission of a crime and the infliction of the punishment. In consequence of this long delay the value of the punishment as a public example is in a great measure lost. A feeling sometimes springs up on the part of the people that, after suffering a long prosecution at the hands of the officers of the law, especially if the accused has been in prison all the time, he has, perhaps, suffered enough ; and that, after such treatment, the additional infliction of the extreme penalty of the law is not punishment but cruelty. Perhaps this feeling has another source in the belief or hope that the character of the man meantime has measurably changed, and that the punishment falls, perhaps, not upon the old criminal, but upon a new and regenerated man.

The delay in the administration of criminal justice and the multiplication of new trials have ultimately the effect of defeating justice in many cases because witnesses die, or are scattered, or somehow get out of the way ; and new crimes, apparently more atrocious because more recent, produce new prosecutions, which take their places upon the calendars of the criminal courts, and seem to demand greater

attention on the part of the prosecuting officer, so that every month of delay increases the chances of escape in the old cases. These delays are due to various causes, chief among which is the extreme technicality of the rules of criminal procedure, which too frequently result in the granting of new trials and the reversal of criminal judgments. These technical rules have been handed down to us from a time when the statute books of our English ancestors were defiled with more than a hundred capital offences; when the accused was not allowed the benefit of counsel, except to argue questions of law in his behalf, and not then unless he had the wit to discover what questions of law were proper to be so argued. Arraigned, perhaps, for an offense the investigation of which involved a complication of facts and many distinct transactions, he was tried generally in a single day. The trial, too, often consisted in a process of the grossest abuse and brow-beating on the part of the counsel for the crown. The situation of the prisoner was so unhappy that humane judges invented a great variety of technicalities to assist him in escaping from the severe penalties denounced by the criminal statutes. As the substantive law of crimes became ameliorated, the reasons which had moved the judges to countenance these technical objections and escapes from the rigors of the law measurably passed away; but the rules have, too many of them, remained.

In the state of Missouri, in 1877, a miscreant deliberately shot and killed the wife of his employer and the unborn babe in her womb, because she refused to forsake her husband and become his mistress. He was four times tried for murder. His last trial resulted in a conviction and a capital sentence, but it went through the ordinary channels to the Supreme Court of the United States on a federal question, and was finally reversed, on a doubtful question of constitutional interpretation, by five of the judges, against four who dissented. In point of fact, taking together all the judges who had heard the case on the last trial and on the successive appeals, and

considering their judgment upon the particular question of constitutional law, it appears that in this remarkable instance *five* judges overruled *thirteen*. Seven years had now elapsed since the commission of the crime. During this time this man had been the advisor, the strengthener and the supporter of the criminal class in the jail. Ingenious and monstrous crimes had been committed by him, even while behind the bars of the prison. He was finally released upon bail and was suffered to die in his bed like a decent Christian.

Instances of miscarriage of criminal justice are so frequent and have so shocked the sense of law-abiding people as to lead to a general feeling of want of confidence in the administration of criminal law, and of disrespect for those who are concerned in its administration. During the last twenty years this popular indignation has found expression in numerous lynchings—executions of accused persons at the hands of mobs—and these lynchings have become so frequent as to indicate the existence of a popular craze upon the subject, and it is asserted that at this time the number of persons accused of crime who are killed by armed mobs exceed in number those who are executed under the sentence of law. The remedy for these great evils lies in the improvement of public opinion so largely represented by juries, in the elevation of the bar, and in the strengthening of the bench. But it does seem, that much could be done in the way of immediate amelioration if the rules of appellate action in criminal cases were changed so as to require a full report of the evidence, taken by a stenographer employed by the state, to be sent to the appellate court in case of an appeal, and so as to prohibit the appellate judges from reversing any criminal judgment, whenever upon examination of the evidence so reported to them, they shall be of opinion that the jury has rightly decided the essential question of guilt or innocence. It is the monstrous practice of reversing just and righteous decisions, rendered in conformity with the overwhelming weight of evidence, upon

grounds which are technical, and which do not touch the substantial merits, that outrages public opinion and leads to the results already stated.

Punishment, certain and swift, should be the fate of all who violate the penal laws. How to compass that, and at the same time give a reasonable appeal, is the problem. And the problem is harder in capital cases, insomuch as the "life is more than raiment" or liberty. In some states, Massachusetts for instance, two or three judges of the Supreme Court are required to sit in trials for offences punishable with death. It certainly seems reasonable, in the present condition of the laws, that more than one judge should pass upon the legal questions arising upon trials, where a man's life may be the forfeit. Whenever imprisonment only may be the penalty, we see no sufficient reason why the imprisonment should not begin at once upon conviction and sentence, though an appeal be pending, for the presumption of guilt becomes so great when a jury has convicted and a judge has sentenced, that though a chance for reversal upon appeal may still be allowed, the execution of the sentence should not be stayed in the meantime. And where death may be the penalty, although in favor of life, we would allow an appeal so long as there was a reasonable chance of reversal, we would nevertheless, upon a conviction and sentence, subject the convict to imprisonment at hard labor in the State prison while the appeal is undecided.

We recommend the adoption by the Association of the following resolution :

In all criminal trials of the grade of felony a verbatim report of the trial should be made by an official stenographer ; in case of appeal this report of the trial should be written out, and transmitted to the appellate court ; and the appellate court should be prohibited from reversing any judgment for error of law, where the court, upon an examination of the testimony returned, should be of opinion that the verdict was clearly right.

LEGAL EDUCATION AND THE QUALIFICATIONS OF THE BENCH
AND BAR.

The answers to our circular on this head represent, we suppose, the views of the legal profession generally, and leave little to be added by us. We insist that ours is a learned profession and not a trade, that it requires for its service high qualifications of character and learning, and that he who enters it pledges himself to do what he can, not only for the promotion of justice, but for the improvement of the laws. Because it is not a trade but a profession, preparation for it should be made with that view. A severe training is essential to useful service, and it is due to the courts and due to clients also that this training should be had, or at least much of it, before admission to the bar. There should be, in our opinion, a prescribed term of study, in a law office and in a law school, followed by a very strict examination in the different branches of the law, before any person is invested with the privileges and responsibilities of the profession. The legislature, the courts and the bar should all seek in their respective spheres to raise and maintain a high standard of learning and integrity for the profession, to which are confided interests so important to the well-being of the whole community.

THE JUDICIAL OFFICE.

The former report of this committee contained so much on the subject of the judicial office, that the Association will hardly care to hear more from us. The learning, integrity and independence of the judges are matters of universal concern. How best to secure these ends is the problem. One class of thinkers advocates appointments by the executive, another advocates elections by the legislature, another still elections by the people. We doubt whether a discussion here of the mode of selection would now answer a useful purpose; but we have no doubt that a majority of the profession, and of the people also, believe that in many of the states the terms of office are too short and the salaries too small. The judicial

office should be able to command the services of the most competent persons, and they should be made independent of parties so long as they remain judges. This can be done best by giving them assured terms so long as they do their duty, adequate salaries, and some provision on retirement from the bench.

CHAMPERTOUS ENGAGEMENTS OF ATTORNEYS.

Your committee believe that the administration of justice is corrupted by the practice on the part of members of the profession in some jurisdictions of prosecuting causes on contingent fees and buying in pending or prospective litigations. The right to appear as an attorney or counsel in the courts of justice is conceded by the state as an exclusive privilege to persons possessing certain qualifications. It is a franchise of great value and is conferred upon condition, expressed or implied, that the person who receives it from the state will exercise it for the purpose of promoting justice and the improvement of the laws. His position is universally regarded as that of a *quasi* officer of the court, and it is hardly compatible with this relation that he should be a private speculator in litigation. The legal profession has been injured, its estimation lowered in the opinion of the people and its influence diminished by the sanction which in certain quarters it has given to these practises. In some states these practises are denounced by statute; in others the rule of the ancient common law, enforced by early English statutes, has been held to obtain; while in still others, the courts have held that the position of a lawyer at the bar of the court is not incompatible with his being a secret partner in the litigation in which he is engaged. In truth, the prosecution of a cause on a contingent fee, or upon an understanding that the compensation of the attorney or counsel is to depend upon the favorable result of the litigation, is not under all circumstances to be condemned; for otherwise it might sometimes be impossible for persons having meritorious causes of action to command

the aid of competent counsel. The prosecution of a cause by an attorney on a contingent fee, unless he supports the litigation with his own money, is not unlawful maintenance, according to the definition of Blackstone or the general opinion of judicial tribunals in this country. The offense consists in prosecuting the suit of a client upon an agreement to have a part of the money or thing recovered for the services of the attorney, or the prosecution of a suit upon a contingent fee, the attorney agreeing to support the litigation at his own expense. We know that the administration of justice is in some jurisdictions scandalized by the practice on the part of attorneys of buying up or taking an interest in claims against wealthy persons or corporations and prosecuting them, with the view of inducing the defendant to agree to a compromise in order not to be harassed by litigation.

An efficient remedy for such abuses would probably be found in *publicity*. The theory of the administration of justice in American communities is that the courts are open, that the greatest publicity prevails and that the record expresses the whole truth. But where the attorney or counsellor who represents a suitor in a cause appears upon the record and stands before the court in his character of attorney or counsel merely, and nevertheless is at the same time a secret partner in the litigation, he does not disclose to the court his real attitude, which is that of a party as well as that of attorney or counsel; nor does the record, in describing him as attorney and counsel merely, express the whole truth. The ends of justice would probably be attained in every such instance, if the counsel for the plaintiff, or for the defendant where he is claiming affirmative relief from the plaintiff, were required to describe himself not only as attorney or counsel but also as interested in the claim, at the time of his first appearance in the case. The court could then better estimate the value of his acts and declarations in the various phases of the cause; and if he were to shed tears over the supposed wrongs of his client, as champertous advo-

cates have often been known to do, it would promote the ends of justice for the court and jury to know whether he were weeping from a real sense of the grievance to which his client had been subjected, or for an aliquot part of the judgment to be recovered.

Upon this question your committee recommend the following resolution :

Whenever an attorney or counsel has an interest in a claim or counter-claim in litigation he must describe himself as so interested at the time of his first appearance in the case, and if he fails to do so, and the fact of his interest is shown on the trial, the claim or counter-claim must be disallowed.

In closing, it may be proper to add that the undersigned concur in the several resolutions which the foregoing report recommends to the Association. They also concur in the general arguments made in support of these resolutions, without each being committed to all of the reasons given for the conclusions reached.

The several resolutions recommended are as follows :

I. The law itself should be reduced, so far as possible, to the form of a statute.

II. The greatest possible care should be exercised in the selection of jurors, much greater than is now exercised in most of the states. No person should be put upon the jury list who is not known to be a person of probity, intelligence and good repute. It should be borne in mind, that a juror is in a very important sense a judge, though a temporary one, and something like the care required in the selection of permanent judges should be required in the selection of jurors.

III. A jury should not be called in civil cases unless demanded by one of the parties.

IV. It should be made the duty of the judge in every case, civil or criminal, to instruct the jury as to the law, and it should be his right in the exercise of a sound discretion, to advise them as to the facts, cautioning them at the same time that they are not bound by his opinion except as to matter of law.

V. The judge should not be required to reduce his instructions upon matter of law to writing, where a competent stenographer, appointed under a provision of law or selected by the parties, is present, by whom such instructions may be taken down as delivered.

VI. The trial court on a motion for new trial, or the appellate court on appeal upon a question of fact, should set aside a verdict where it plainly appears to be unsupported by substantial evidence of a credible character, or to be contrary to the weight of trustworthy evidence.

VII. The practice of submitting to juries special interrogatories upon the material or controlling facts in issue, and of disregarding their general verdict when inconsistent with their answers to such interrogatories, ought to be extended.

VIII. The law should provide for the settlement of the facts in the court of first instance, subject, perhaps, to one appeal, and the courts of first instance should be so constituted as to enable them in general to settle satisfactorily the issues of fact.

IX. In all criminal trials of the grade of felony a verbatim report of the trial should be made by an official stenographer; in case of appeal this report of the trial should be written out and transmitted to the appellate court, and the appellate court should be prohibited from reversing any judgment for error of

law, where the court, upon an examination of the testimony returned, should be of opinion that the verdict was clearly right.

X. Whenever an attorney or counsel has an interest in a claim or counter-claim in litigation, he must describe himself as so interested at the time of his first appearance in the case, and if he fails to do so, and the fact of his interest is shown on the trial, the claim or counter-claim must be disallowed.

All which is respectfully submitted.

DAVID DUDLEY FIELD,
JOHN F. DILLON,
GEORGE G. WRIGHT,
SEYMOUR D. THOMPSON.

AUGUST 18, 1886.



Judge Wright desires to add the following for himself:

I do not agree to the crusade, if it may be so called, against the system of jury trials. I would preserve it in all its integrity and the greater this integrity the better. I agree that much more care should be exercised in the selection of the panel, and that only those of honesty, and if possible above the average education, should be chosen. In the rural districts, a state like ours for instance, we are not afflicted with incompetent or so-called "professional jurors," as in the cities, and yet even here at times the evil is not to be denied. In too many instances, however, this results from the easy manner or readiness with which judges excuse those regularly selected and returned, men of business and of intelligence, who interpose their engagements as excuses and are relieved, their places filled by those who are too lazy to do anything, and who are the last persons to well and intelligently settle even the commonest controversy. The truth is, our best citizens do not sufficiently realize their obligations in this respect and they ought to be held by the court, and required, under the severest penalties, to discharge these duties. If our best business men, the most intelligent and well known for their integrity, were selected, and compelled to serve, we would have much less complaint of the jury system, certainly less ground for just complaint. And yet after all, I doubt whether in the hands of a good and careful court, you will find a much safer or better method for settling human controversies than that long in use, the much abused and yet well-tried jury system.

I would give to the judge the right to sum up the case, comment upon the evidence, give his opinion of its weight and what it proves, subject, of course, to the right of the jury to exercise its own judgment. I believe the federal practice in this respect much better than that followed in most of the states. Instructions, however, I would have in writing, to be

given after the argument, and prepared by the judge, unless the stenographer takes them down ; and in either case where either party desired it they should go to the jury. The difference between instructions and depositions is, that in the latter case, as a rule, they constitute but a part of the evidence, and to permit them to go to the jury, since they can be re-read in the jury room, while that delivered orally is heard but once, and may be forgotten, might be unfair ; whereas, as to instructions, they all go and neither party has advantage from their re-reading. If parties agree that they should not go to the jury, of course, all right. The advantage of written instructions, or the exact language being preserved by the reporter, is not alone for appeal proceedings or settling the bill of exceptions, but that the jury may know in the quiet of their deliberations just what the law is. I think it is a great safeguard to intelligent action that the very words and opinion of the judge should be taken to the jury room. With an honest and able judge we would thus have few miss-trials and fewer unjust verdicts. Without these qualities in the presiding officer a trial is a farce anyhow, and the administration of the law and justice a burlesque. The great desideratum in securing speedy trials and just judgments is an able and honest judge : I only add, as to payment of the jury fee, I favor it, as a rule, but perhaps an exception might be permitted where, from a proper showing, the judge should be satisfied that the suitor was unable to pay.

As to "champertous engagements," I have to say that they should be discountenanced and prevented by all lawful means. The temptation to dishonest practices and the use of "unprofessional shifts and devices" are strong enough where the retainer and services are upon a contingency ; and to allow the attorney, under any circumstances, to advance and become liable for costs and expenses, tends to pollute the whole fountain, and he becomes the interested practitioner and not the true and noble advocate. We have enough of contingent retainers—attorneys standing in the way of clients agreeing with

their adversaries, because of their struggle to make illegitimate gain. If the attorney will make a champertous agreement, since, of course, the client makes the retainer with full knowledge, I would have it, when disclosed, operate to dismiss and forever bar plaintiff's cause of action, or the claim if preferred by defendant. A large per cent. of our litigation is set on foot and continued by reason of those iniquitous champertous arrangements, to the detriment of the public interest and the reproach of the bar and of our judicial system. Discountenance and prevent these in all ways possible.

REPORT
OF
CORTLANDT PARKER,

One of the Committee on Delay and Uncertainty in Judicial Administration.

Having had no opportunity, in consequence of the great distance between the residences of the various members of the committee, and of the fact that all of them are more or less busily engaged, of holding any conference. the suggestion has been made by the chairman that each member should, if he pleased, signify his views to the Association by making a separate report. The subscriber will proceed, as briefly as possible, to comply with that suggestion.

He begins with the remark that no one, as long as human nature is what it is, can EXPECT entire freedom from delay and uncertainty in judicial administration, that delay and uncertainty have not been, in his own experience, so EXCESSIVE as two of the committee at the last session would seem to admit. Indeed, the report almost absolves legal machinery of fault in this respect when it lays the blame so largely as it does upon legal practitioners themselves, and upon the individuals holding judicial positions. Were practitioners always able and willing to push their causes or defenses; were judges always as prompt, skillful, industrious and energetic—as fully possessed of that tact which is the product of forensic and judicial experience, as well as of that intellectual as well as moral integrity which is so needful to their great office; that fairness of mind which makes prejudice impossible and which convinces all litigants of the judge's complete trustworthiness—the hackneyed complaint of the law's delay would have, in

most American states, but little to stand upon. For it is not the delay of the law, but of the ministers of the law, which should be arraigned. Nor are clients, generally, themselves without blame in this matter.

A person thinking himself injured and seeking redress by litigation, ordinarily selects some one of the busiest lawyers he can find, just because he aims at getting one of the ablest. His adversary has, in this, an additional reason for doing the same thing. These counselors, through this fact, and because of their entire inability to meet, with the promptness they desire, the calls of their numberless engagements—because, likewise, of the claims of ordinary courtesy between man and man—exercise what they think a not unreasonable discretion in meeting, by petty delays, the exigencies of the business, each of the other. Hence, innumerable adjournments before courts, and especially before referees; and thence, screams of vituperation from the public, from the press and from the litigants themselves, as to the “law’s delay,” when the evil, in almost every particular case, may be found to arise from the resolution of the party to have the services of the very best advocate he can find—from the natural tendency, if not the sense of obligation, on the part of the advocates themselves, to undertake more business than their physical strength justifies, as well as ten thousand accidents befalling every judicial controversy, through which delay is often no more than simple justice.

And may it not be doubted whether some delay in legal machinery is not best for the community? There is a haste which is indecent and unjust, as well as a delay which is excessive and iniquitous. Such delays in the administration of criminal law, as too often occur, are certainly greatly to be deplored; but, on the other hand, the rapid action of the French Revolutionary Tribunal is not the only illustration of the wickedness and cruelty of undue haste. “The mills of the gods grind slow,” because justice, human as well as Divine, exhibits majesty and gains respect by stately procedure.

Nor is it clear that in civil proceedings any real good is gained by undue haste. How rapidly they should move is a question of sound public policy. It is the popular belief, doubtless, now, that where there is no question as to indebtedness, judgment should be given at once, and the axe of execution, sale and bankruptcy forthwith fall. But a long experience and observation lead some to think that there were more doubtful debts collected when debtors had the rope, and therefore the hope which, some years ago, the delays of the law gave them by postponing judgment some sixty or ninety days, even upon indisputable debts, than are gotten in under the present system. Then, a brave man saw some chance in fighting for his life and for his mercantile honor. Now, such bravery is folly. He succumbs to the storm—descends to the disgrace of compromise as a necessity, or else plunges, worse still, sullen and despairing, into the depths of utter insolvency.

While a little reflection will, it is thought, show that more is said of the law's delay than is just or right, and that the real blame for delays in litigation lies elsewhere than with the law or its machinery, it is yet true that in some states in the Union, and in the federal courts, the machinery of the law is clogged, and that improper delays occur—delays which should be abolished, as far as possible, by statutory action.

It is a fact, however instructive it may or not be, that in that state of the Union in which the common law and the legal machinery of the common law are most cherished; where there still remains a separation of equity and common law jurisdiction—nay, where even old-fashioned special pleading, with all its alleged horrors and monstrosities, is practicable; where greater time than in most states is given for filing pleadings, and the progress towards an issue in litigated causes is slower—that there is so little of the "law's delay" that complaint on that subject is comparatively rare; that indeed there really is no just cause for any.

Let it be remembered that it is the law's delay—not that

of the lawyers or of the judges, which is in question. The American Bar Association has not yet sought to provide recipes for individualities in practitioners. Certainly it has not sought to improve the habits or manners of judges. It is only with the faults of the law, not of its practice, or of its practitioners, that it is, in this regard, concerned.

In the state to which reference is made, each county has three terms of court each year. A cause begun in the first half of the vacation is almost sure to be at issue by the following term, and on the calendar for trial. A cause begun in the latter half of the period intervening between terms, must be ready at the next court but one. This means that it takes from thirty to ninety days to get an issue ready for trial. And scarcely ever does a term end without the judge's calling every cause upon the calendar. In the populous counties, the judges work hard. They come to court at nine or ten o'clock, and spend six or seven hours there. They sometimes sit till late, to finish a cause which demands it. They earn their living well. They are decently paid. Good men can afford (making a considerable point of the honor) to take seats upon the Bench. And when it is found that a judge is worth keeping, he is kept there. It does not matter much for his politics. He is not elected by the people. He has not to recommend himself for nomination. He has not to decline to run because of the expense. The executive appoints, the senate confirms. The term of office is but for seven years. Yet a new man upon the Bench is a very rare event.

To prevent delays, both in the administration of civil and of criminal justice, the latter, except in the case of homicide, is given into the hands of the Quarter Sessions held by three judges (its president a lawyer), and thus time is given for both civil and criminal causes.

So much for common law causes. The delay of issues joined in chancery is, of course, greater, and yet no just cause of complaint of the law in this matter exists. Answers must be filed within sixty days after return of proofs; plea

or demurrer within forty. A Chancellor and two Vice-Chancellors, with authority not to decree but advise, compose the judicial force of the court. Evidence is taken, as of old, by masters, and read before the Chancellor on final hearing. Or, causes will be referred, on motion, to one of the Vice-Chancellors, and then trial comes on, having regard to their engagements, and the case is disposed of upon oral testimony.

That decisions are too often very long delayed after these trials, and that the trials themselves are too frequently adjourned, is, we fear, too true. But such delay springs from other causes than the fault of the law. Engagements of lawyers, engagements of the court, absence of witnesses, the mutual convenience of counsel and parties—these are the sources and causes of delay. What law can do away with such? Inordinate incubation over causes that have been heard, the most fertile and most provoking source of delay, may be interdicted. But what else can be done, who knows?

Let it be said, to the credit of the Chancellor himself, that it has seldom or never happened that any cause heard before *him*, was not decided at the next term after.

The same dispatch exists as to causes on appeal. There are really two courts of review. Except in the important matter of new trials, error lies from one of these to the other, and appeals from every court, whether of ecclesiastical or equitable jurisdiction, to the other. Its title is "the Court of Errors and Appeals in all causes." The sessions of the Supreme Court, whose jurisdiction is that of the King's Bench in England, are never longer than two weeks. It has nine judges. Four of them compose the main court, and hear arguments for new trials, on demurrers, and the like. Three form what is called the branch court. They hear and dispose of *quo warranto* cases, *certiorari* matters, and all sorts of summary review. The two remaining judges sit with the same jurisdiction, to determine matters where counsel on both sides, desiring expedition, agree to their doing so. The consequence is, that in the brief fortnight of their session the calendar of

the Supreme Court is always cleared. Decisions are given at the following term. When Supreme Court rises, the Court of Appeal begins. This court is composed of no less than sixteen judges. The Chancellor is its president. The nine judges of Supreme Court and six appointed for this court only, make up the whole number. These six judges may be lawyers, but seldom are. They are gentlemen of high character, useful on questions of fact, and individuals among them have been among the very best judges, both as to law and fact, in the court. It is thought that this feature of the tribunal is not unpopular; and it has been therefore retained. No judge can hear a cause which he himself decided. Hence the anomaly that the law judges give final decisions in equity, and the equity judge joins in reviewing matters at common law. Cumbersome as this court may seem, it is rare that its docket is not cleared. Such a thing as a commission to clear a calendar was never thought of in New Jersey.

The judges are decently paid. The Chancellor receives \$10,000. Each judge of Supreme Court gets a salary of \$5000, and an additional compensation proportionate to his labor as trial or county judge, swelling the income of some of them to \$10,000, more or less, and of all to about \$8000.

The object of this sketch has been to show that there is little need for just complaint of the law's delay; that legal machinery *may be* such, as that with reasonable industry and effort, such expedition can be attained. New Jersey has a population of over a million. Her territory is traversed by more miles of railroad, proportionably, than any state, save one, and questions of corporation law are very numerous in her courts. Situate between the two most populous cities on the continent, she is subjected to the incursion, constantly, of the worst population, cramming her gaols and causing necessarily the clogging of her criminal calendars. Yet no one justly complains of delays in her system of procedure, though complaint is made there, as elsewhere, of delay by individual judges. Much less is complaint ever made of delay in the

punishment of crimes. And finally, let it be said that no one ever hears in New Jersey a suspicion of the integrity of her judges or of their being ever knowingly influenced by aught save the law and the testimony.

The expedition of legal procedure in this state is due largely to two things: first, the lodging of original equity and law jurisdiction in different hands; second, the adoption of branches by her Supreme Court, so that the vast aggregation of business before that tribunal is rapidly disposed of. With these is joined industry on the part of her judges. There are no eleven or twelve o'clock men on her benches. Their incumbents, almost without exception, are driving men.

There are comparatively few new trials. The rule contained in Resolution No. 8, of the last meeting, that the ordering of new trials should be restricted to cases where it is apparent that injustice has been done, has long been practically established. And such injustice is often remedied by the court fixing a sum, on the acceptance of which the verdict should be allowed to stand, while it is still more often prevented by the course pursued in relation to juries. Trial by jury is a political institution. It is the expression of the rule that it is not expedient for the community to regard any litigated fact as established, unless twelve fair men, fairly chosen, and having fairly heard the case, unite in declaring its truth. It is necessary to the fairly hearing the case that the jury should be instructed by and should *lean* upon the learning, experience, capacity and integrity of the judge; necessary because both parties, in the heat of combat, are too sorely tempted to mislead, and because judicial experience is essential as a guidance in *investigation*. Hence the practice in New Jersey is that the judge, in his charge, should analyze, arrange and sum up the evidence, even at the risk of his at least betraying his own opinion. With such guidance, verdicts are seldom wrong, and delays on that account seldom occur.

Trial by jury, we have said, is a political institution. As a

means of arriving at mathematically or even morally correct conclusions on disputed facts, experience could hardly vindicate it. But a verdict satisfies the community ten-fold more thoroughly than merely judicial decisions. In criminal cases and in torts, decisions merely by judges would never be equally satisfactory. Nor ought the responsibility of deciding in such cases to be cast upon judges alone. In matters of admitted contract, except in case of unliquidated damages not susceptible of computation, juries are, at best, unnecessary. Where the fact of the contract is at issue, jury trial is best—not, perhaps, for the attainment of the truth, but for the satisfaction of the community. The fact that in one form or another trial by jury has been copied and incorporated in systems not of common law origin, strongly corroborates its value.

But trial by jury without the presence of a guiding judge is absurd. Nor is it common law procedure. It fails, too, exactly in the point where the jury is valuable. It cannot satisfy an intelligent community. Horrible results occur through the incompetency and the corruption of juries. Every effort should be made to prevent them. Special juries should be encouraged. The old common law plan of striking such juries is about as good a scheme as can be contrived. Liberty should be given to parties, too, to waive juries and submit their disputes altogether to the court. Matters of account, or the like, should never go to a jury.

The laws of few states need amendment on these points. The subject has but little connection with that of the delays or uncertainty of the law. Juries do not make law or even declare it. Their verdicts do, occasionally, delay its wheels, and therefore what has been said is not irrelevant. To the propositions stated in what may be called the main report on this subject, excepting that numbered "II.," a hearty concurrence is given. From that no dissent is desired to be expressed. At the same time, no reason is seen why juries should be a personal privilege—much less for requiring that the party wishing one should pay the jurors.

What has been said has accomplished its object if it has shown that the law itself is responsible for little delay in litigation, and that little is readily to be remedied by a division of labor, which may be effected through statutory enactment, or indeed, largely by mere arrangement among judges. It is believed that in one or two states, judges having both equity and law jurisdiction have designated one or more of their number to attend to all matters of equity, leaving to the rest all matters of law. And if less than the number composing a court are legally competent to constitute it, there seems no difficulty in the adoption of the scheme of branches. Suitors are not legally entitled to anything but the judgment of the court. To the judgment of all its members they have only a moral right. The necessary absence of a judge does them no wrong, and his absence hearing other causes is certainly a necessary one. It is equally necessary if causes be so numerous as that justice is delayed—say rather, as in the United States Supreme Court, denied—by the impossibility of reaching them. This, to be sure, is a renewal of an old subject upon which the vote of the Association has been taken. To that vote the subscriber bows. He has signed his name to another report calling for the immediate adoption of the opposing plan. But he believes that until Heavenly grace shall alter the hearts of politicians, neither political party will ever consent to place the appointment of such a number of honorable offices as that plan calls for in the hands of its opponent, and he expects that year after year will increase the arrears of the Supreme Court until soon appeal will be well nigh, if not wholly, equivalent to defeat of the litigant successful in the court below.

There is one remedy for the law's delay not yet mentioned, and perhaps wholly impracticable in this country, but to which it is believed English litigation owes its comparative freedom from this complaint. It is the increase of the cost and expense of litigation. The punishment which follows defeat in England is simply tremendous. The losing party pays not only a huge bill of charges incomprehensible with us, but also the fees of

opposing advocates. Think of this in the city of New York! And yet the practice of adding a percentage to verdicts, now in vogue in the state of New York, may soon have the effect which the system of taxation of costs abroad certainly tends to produce. The suggestors of this practice hardly intended to diminish litigation. But that result is a natural consequence.

The subscriber does not dissent from the resolution recommended by the signers of his associates' report upon the subject of the "Relief of Appellate Courts," or that of the "Delay and Uncertainty in the Administration of Criminal Justice," while desirous not to be understood as joining in the views expressed, other than by such resolutions. He adopts with earnestness every word said upon the topic of Legal Education, and the Qualifications of the Bench and Bar. He likewise approves, in the main, what is said in relation to Champertous Engagements of Attorneys. He is not prepared, however, to say that unless they make themselves parties to the case, the claim itself should be disallowed. That is scarcely just to the claimant himself. Enough will be accomplished in the way of unearthing the truth by permitting parties to prove the fact, upon trial, against their adversaries.

And, in relation to all these topics, and what is said concerning them, he has not been struck with their relevancy, generally, to the duty of the committee. He ventures to suggest, with the greatest respect, that the original report, as well as the reports of this session, have covered much more ground than was contemplated by the original resolutions inaugurating the inquiry.

It remains, and perhaps it was the solitary matter which ought now to come before the Association, to discuss the topic of the resolution included in the original report signed by the two distinguished lawyers of New York, to-wit, "that the law itself should be reduced, so far as possible, to the form of a statute."

It cannot be denied that this sentence is admirably drawn

in order to the obtaining a large assent. It says everything to one mind, very little to others. What is meant by "the law itself?" How far is it possible to reduce any part of it to the form of a statute? One may adopt the resolution, and yet differ, far as the poles, from others as to how much of the law should be statutory, and how much other than statutory.

Is not the sentence itself an illustration of the danger of reducing all law to the form of a statute? If it passes will it not give out to the world that this Association adopts what is popularly known as codification? And yet does not that saving phrase, "as far as possible," give opportunity for every shade of belief, except that of those, if any there be, that think there never should be any statutory law at all? It is fair, however, to presume that this was not intended; that the resolution means to say, and to make this Association say, that our general law should be upon the *system* of establishing what is termed a "code," instead of the system of the law of England, as originally adopted, and still almost universal, in America. It is in this way that the Association have understood it. Therefore was the committee continued, or rather formed anew. Therefore the interest with which the approaching meeting of the Association is regarded.

Statutes form a part of the system of law in England and in America. Statutes are no doubt essential to the system requiring a code. But they are perfectly consistent with the other more generally adopted system. Nay, they form the most important part of that system. But one statute, or a body of statutes, do not constitute a code, or even approximate to such a creation. If the resolution means only to express a preference for a statute over other forms of law, many will assent to it. But the danger is, and that especially in view of the direction from which the resolution comes, that such assent may be entirely misinterpreted.

What, then, is a "code," in the sense in which it is favored by the friends of this resolution? Richardson says, "a digested body of law;" Johnson carelessly says, "a book of the civil

law ;" Worcester quotes from the Penny Cyclopaedia, and says "a code may be either a compilation of existing laws (though this is more properly a *digest*) or a new system of laws founded on fundamental principles." Webster substantially adopts this two-fold definition.

"A mere compilation of existing laws" is perfectly unobjectionable. There is no state in which "revisions" have not taken place; in which existing laws have been arranged, classified and perhaps here and there added to or improved. No one calls these revisions codes. No one has any objection to them. They are convenient—and that is their entire merit as such revisions. How worthy of commendation the laws which are compiled are, depends upon them and not upon their compilation, arrangement or even their revision.

But no sooner is it proposed to introduce a real "code"—that is, "a new system of laws founded on fundamental principles," the reduction to statutory form of everything which becomes law through the action of courts in construing statutes, whether or not revised, or in establishing the principles of law on matters which statutes have not governed—than every experienced lawyer feels a shiver of apprehension. The first question suggested to his mind is, *Qui bono?* Why not legislative and judicial action, which, for the most part, and certainly in expressed intention, are harmonious and not antagonistic, go on in the future as they have in the past, and shape the law as society needs it? The next question is, Who is it that can presume, not only to throw into exact words all legal principles heretofore established, but to attempt to anticipate the requisitions of the impenetrable future? Into whose hands can we safely commit the task of determining what ought to be, and therefore shall be, the will of the governing power in ages to come? If laws create a people, as in turn a people with its hand creates laws, whom shall we trust with this attribute of omniscience? It does not satisfy this apprehension to tell us of the codes of Justinian and of Napoleon, any more than to narrate escapes from shipwreck diminishes

in our minds the perils of the sea. It is of little consequence that states among those of our Union have adopted "codes" and then got used to them, and that their people and their lawyers lean against any change. Eminently true is it, among lawyers and citizens, as Hamlet says of man with reference to the dread of death, most of us would

"Rather bear the ills we have
Than fly to others that we know not of."

Nor is it cowardice. It is wisdom. It is the fruit of experience. Exactly in proportion as a man makes light of the dangers of law-making, and declares his ability to construct a "body of law," a "new system of law, founded on fundamental principles," or imputes that ability to others, and advocates the expediency of trusting himself or others—in just that proportion is a prudent, sensible man apt to believe that the risk is too great, and to shrink from the experiment. Perhaps there are men worthy of such a trust. Probably the great American advocate of codes is as nearly so as possible. But such men are few, and distinguish the ages in which they lived. Tribonian, deputed by Justinian to form the code which goes by that emperor's name, was aided in his gigantic task by nine selected commissioners. The Code of Livingston was declared by Villemain "to be a work without example from the hand of one man," yet it remains still a merely suggestive thing: it has not been adopted. The Justinian Code does not come within the definition of the word "code" now under discussion. It was a collection of imperial constitutions, as the pandects were of the opinions of juris-consults. It was, in fact, hardly even a digest. The Code Napoleon grew out of the immense number of separate systems of jurisprudence existing in France before 1789. With all the care taken to perfect from these a system for the government of the whole country, it has been condemned for the ignorance and haste with which it was compiled. And, says a late writer, advocate though he is of codification as a policy: "The French

and Prussian codes, although they have been of great service in simplifying the law, have failed to prevent, outside themselves, that accumulation of judiciary and statute law which in England has been the chief motive for codification."

The severest duty imposed upon a legal draughtsman is the preparation of a will. Why? Because it is necessary to attempt providing for the future. And the future will not be provided for. It takes its own way. And thus it often happens that the only result the testator most deprecated comes to pass, and that that which he most desired does not happen. This is the difficulty inherent in every code which is not a mere compend. Society changes. No mortal skill can provide for what is to come. Statutes fail to do it. They become obsolete, frequently, and remain upon the book unheeded. Why? Because society has become a different thing from what the draughtsman of the statute expected. The legislature of one year can, indeed, prescribe laws to govern the near future. But it must let the far future alone—just as the wise testator must not presume to think that he can regulate the disposition of his property for years ahead, although he may do the right thing for those soon after he is gone; just as the common law restricts the period of time during which the will of a testator shall dispose of his lands. And this impossibility for the human mind to make full provision for all that is to come, suggests the chief difficulties of the codifier. What is to be done in those cases for which the code has not provided? How is new law to take its place in the code?

The Emperor Napoleon cut the knot. He compelled judges to give a decision on all cases, whether contemplated or not by the code, and bade them decide such cases by natural equity, natural law, Roman law, ancient customs, usages, examples, decisions, jurisprudence, common right, general principles, maxims, doctrine, science. The Prussian code requires the judge to report new cases to the head of the legislative department, and they are decided by the legislative commission.

Such a commission is a judiciary, call it by another name if you like. So, codes fix no period to the formation of the law. It still proceeds, changing from time to time, the more rapidly as the people it governs changes. And new situations are prescribed for by new statutes, or if none are passed, by the application according to natural equity and right reason of the old. Says the writer already once quoted: "It is absurd to suppose that any code can remain long without requiring substantial alteration. Cases will arise when its meaning must be extended and modified by judges, and every year will produce its quota of new legislation by the state. The courts should be left to interpret a code as they now interpret statutes, and provision should be made for the continual revision of the code, so that the new law created by judges, or directly by the state, may from time to time be worked into the code."

Four reasons have been given by a chief champion for this systematic codifying of the whole body of law. First. The same person should not be both lawgiver and judge. But he that declares authoritatively the meaning of the law is really and necessarily, in one sense, the lawgiver. No code can work without an expounder. That expounder, called a judge, is *ex-officio* a lawgiver. Second. It is said that "the law with us is a sealed book to the masses—it is a sealed book to all but the lawyers, and but partly open to them—and that this will be so till all law is written in a book of such dimensions and in such language that all can read and comprehend it." Perhaps. Yet the New York code fills six volumes. That of Justinian consists of twelve books. The Code Napoleon consists of two thousand two hundred and eighty-one articles, arranged under titles and divided into three books, and it is the subject of a "vast number of commentaries." Code or no code, as society advances, laws and law-books will multiply. In the simplest form of society there were no lawyers. They were the product of necessity and convenience. The legal profession has become, like all professions and trades—if an evil—a necessary evil. Are there no lawyers in France. or

Germany, or Italy? None in Louisiana or California? How many of the people at large in these commonwealths dare trust to their own opinions as to the meaning of the code, and to abjure the aid of lawyers?

A third reason for a code is said to be "the experience of every lawyer"—his difficulty in finding a case which fits the one proposed to him for his opinion. But does the thorough lawyer, well furnished in his profession, having experience as to the ordinary principles of judicial decision, disturb himself so greatly with decided cases? Is "the first question he asks himself, 'Is this point decided?'" Or, being persuaded that law is right reason, does he not rather determine in his own mind what the law ought to be, and use decisions, if he can find them, only or mainly to sustain his views.

Undoubtedly, if the matter is settled by a statute whose meaning is perfectly plain, there ceases to be a question. Undoubtedly, a good index, whether to books of reports or to a code, is a great convenience. But strain the human intellect as you will, must there not occur many cases which no code can be prophetic enough to cover? We may safely admit that a code might in some cases be a more convenient thing than a set of reports is, or even any of the digests. But what a slight reason this is for substituting for the English common law the continental French, German, Russian or Turkish system of a code. Whether it be a convenience or not would seem to depend rather upon the sufficiency of its index than anything else. Can this be a grave reason for such a change as that of systems of law?

That codes once established are not given up, if true, is an argument already met. To nothing do men so cling as to customs, and established law is but authoritative custom. Turn the argument from experience around. Why has England, with all the cry for a code since the days of Jeremy Bentham, never once yielded, even for a time? Where is the greatest freedom, the greatest happiness, the finest development of man? Under the common law, or the laws of the continent

of Europe? The system of law under which we live and have so long prospered is beyond all eulogium. Is it not enough to say that it is the law of the Anglo-Saxon race? We assert the superiority of that race over every other. We ourselves, at least, agree on this point. And England and America prove it. To what is this superiority due? For one, I say to nothing so much as the common law—offspring of the love of freedom, and grandest instructor in its principles. And its method of establishing itself is, first, in customs; then in authoritative judicial declaration; then, when doubt is dispelled or when the majority agree, in statutes, which statutes are to be judicially expounded, if need be, when sought to be enforced. And so the real will of the people is carefully, cautiously and accurately discerned. This method, carrying in itself provision for all changes and exigencies, elastic, flexible, enduring, has been the reason why men of English blood have never been dissatisfied with their law, and have always been the happiest and the foremost of the human race.

Our present system is assailed as being a system of judge-made law, and it is declared that "there are now in this country but two ways of making law—legislation and litigation; that the real question is whether the American people should be governed by legislation or litigation"—the preference of the members of the committee asserting this being given to legislation. But, it is submitted, with greatest deference, that this statement is incorrect. If all our law is turned into statutes, it will of course be true that we shall be, *formally*, governed by legislation. But will it be so in fact? Will not some one, two or more learned lawyers, draw out the code? Will it not be necessary to cry "hands off" to legislators when it is reported for their sanction? Will the legislators, as a matter of fact, do more, if they do that, than listen to a boisterous clerk while he yells out in monotonous thunder the words which the codifier has prepared? In the minds of how many legislators will those words rest long enough for them to have an idea of what the sentences mean?

Who does not know that this is so, and necessarily so? What code could ever pass except through the faith and reverence of legislatures? And if this be so, who is the real law-maker? Is it the legislator or the codifier? And if the codifier, is his law to be more respected than judge-made law—the law, namely, of some man of learning and integrity, before whom the very matter ruled upon has been laboriously discussed prior to even more laborious consideration?

Judicious codifying, it is submitted, requires, first, extraordinary learning and constructive ability; second, long and faithful absorption in the work; third, continued existence in order to proper amendments, alterations and additions; fourth, a legal compact with legislatures for the passage, unquestioned, of all that may be devised. In other words, there must be a board of law-makers, acting as an authoritative privy council to the sovereign, a continuing power behind the legislative throne.

The devolution of such power upon any individual, or number of individuals, is impossible under our institutions. Nor is it in the least necessary. The judiciary, with their power to construe, expound, interpret and apply, form such a continuous board. Litigation suggests the deficiencies of the law and evokes the judicial voice. If that expresses the ideas and feelings of the community, well—if not, the legislature steps in and frame statutes. From time to time the legislature itself revises and reproduces or lops away what is obsolete or needs correction, and adds according to its pleasure. Thus, indirectly, the judiciary supplies such future codification as is desirable, while unnecessary or unadvisable codification is avoided. The question really is, shall experience, under the guidance of judges, follow popular necessities and shape law as these necessities and the popular wish develop, or shall a commission be constituted empowered to make law, at the risk of the introduction of much that is merely speculative and theoretical? The bent of codifiers is in that direction.

I close by the adoption and quotation at large of the language

of one of our most capable, as he is one of our most honored members, delivered five years ago to this Association, as its President. I mean the Hon. Edward J. Phelps, our distinguished Minister to England, one of the original members of this committee:

"Doubtless the most important legislation of the year is to be found in the adoption, in New York, of the penal and political codes. These statutes have been very long under consideration, and have enlisted in their preparation much labor, ability, and learning. They have given rise to great difference of opinion, and to a discussion in print in which the arguments on both sides have been exhaustively presented. Time allows me but a few words on the subject.

"It is quite probable that codification may be found much better applicable to the subjects of these codes, in respect to which the law is already, in large measure, embraced in statutes, than to general jurisprudence. If applied to that subject, as is proposed by its advocates, I am unable, for one, to believe that the result can be fortunate. The origin of the common law was coeval with that of our race. Through all the subsequent centuries they have grown up together. It has come down to us with the blood that flows in our veins. Its history has been that, not merely of our jurisprudence, but of our principles of civil liberty, our institutions, our language, our literature, our religion. It has kept pace with civilization, and its triumphs have been the great victories of peace. All the best government, all the best justice the world has ever seen, have grown out of it.

"Since Magna Charta, humanity, by the exertions of the Anglo-Saxon race, has made a larger and more real progress than in all previous time. Compare the history of those nations in which codes have prevailed with that of England and America under the unwritten law. If it demonstrates anything, it establishes the superiority of a government and a justice founded upon general principles, over that which reposes upon any collection of arbitrary written rules. The

one has been the constant source of liberty and of human advancement; the other the engine of despotism and the harbinger of national decay.

"The Mosaic code was superseded by the Christian religion. But the Author of Christianity devised no code to take the place of that which had failed. He left His work to stand upon those beneficent principles, which few and simple words were sufficient to announce, but which are comprehensive enough for all the vicissitudes of human life. Christianity was the first system of unwritten law. The common law was its legitimate and necessary outgrowth, and, in its turn, superseded, so far as our race is concerned, the second great code of the world, the Roman civil law. In my humble judgment, we might as well attempt to codify the application of the principles of Christianity as of the principles of the common law. The process of growth and development that is essential to the one belongs equally to the other.

"Why should we part with a birthright that has proved so beneficent, for the sake of entering upon any doubtful experiment in a matter so vital? In the language of Burke, is not 'the old, cool-headed general law better than any deviation that can be struck out of the present heat?'

"For one, I would not willingly consign to the dissecting-table of the codifier the noble and generous vitality from which all our generations have been nourished, nor consent to substitute in its place any cunningly-devised skeleton that can be constructed out of its corpse.

"This question has been discussed as if the choice lay between our unwritten law and such a code of statute law as the best available learning and wisdom may laboriously devise. I do not so regard it. The proposed compilation, as such, may have all the excellence its friends claim for it. How long will it stand, and how and by whom is it likely to be changed? Of what material are our legislatures generally composed? How are their members nominated, and upon what qualifications chosen? By what considerations are they

principally moved and by what influences controlled? What is their competency, on the whole? Not merely to regulate the machinery by which the details of local government are carried on, but to prescribe and ordain for a great country the general law of the land. These questions answer themselves. We know that such bodies do not command public confidence; that their sessions are viewed with apprehension and their adjournment with a feeling of relief. In several of the states whose legislation I have endeavored to review, resolutions appear in their session laws providing for the investigation of charges of bribery and corruption against their members. In others, new statutes, aimed at such offenses, have been thought necessary. In others still, the newspapers that contain the official publication of the laws contain, on the same sheet, denunciations of the corrupt and venal means by which, as it is declared, the passage of many of them was obtained. It is not for me to say to what extent these charges are true. In some states, fortunately, they have no application, but we know that in other states they are widely believed to be true.

“Even in those legislatures where integrity is unquestioned, the perusal of their labors is rarely calculated to inspire confidence in their wisdom. In the majority of them—happily not in all—the session laws exhibit hasty, inconsiderate, ill-advised legislation, framed to meet the real or supposed hardship of some particular case, to further some private end, or to reflect some temporary gust of popular feeling; they are characterized by a tendency to extend legislation to all manner of subjects, as well without as within the domain of municipal law, making a new statute the remedy for all ills and inconveniences; by a looseness and ambiguity of expression that leads to endless uncertainty and litigation; and last and worse, by a fluctuation of purpose that deprive statute law of all stability, and alters, amends, reconstructs and repeals its enactments from year to year, more rapidly than the courts can grope their way to a construction of the language in which they are couched.

"It is to such law-makers as these that it is proposed to commit the whole body of our jurisprudence, in one vast statute, to be cut and carved, patched and plastered, from year to year, in a perpetual succession of change. It is not to be reasonably expected that after a few years' time, enough would remain of the polished and careful work of the original codifiers to be recognized by its authors. While the courts of justice, having no longer any voice or control in the development or growth of the law, will be reduced to the function of trying issues of fact, and ascertaining the meaning of doubtful statutes.

"Much speculation has been brought to bear by ingenious writers on the prospective dangers of a republican system of government. The tendency to centralization, to executive usurpation, and toward military despotism, have been set out in colors which have thus far, at least, been but very partially realized. The mischiefs to be apprehended from indiscriminate, reckless and corrupt legislation do not seem to have been anticipated. But experience is fast pointing out that the country can endure all its other dangers with less apprehension than the action of its federal and state legislation inspires. It is already manifest that the danger lies far less in the executive than in the legislative power. And it is not to be denied, meanwhile, that the wholesome checks which the framers of our constitution devised, and which constitute the only protection against arbitrary or unjustifiable enactments, have, by the growing reluctance of the courts to interfere with the legislative power, been suffered in no small measure to crumble away.

"Legislatures in this country are steadily grasping larger powers, and approaching nearer and nearer to omnipotence. It would seem to me that the efforts of wise men should not be directed towards enlarging the sphere of legislation. To a certain extent it is necessary, and may be hoped to be useful and salutary. Its proper field is wide enough for the capacity of those concerned in it, and need not, indeed cannot, be

diminished. But surely it would not be judicious or safe to turn the whole law of the land into statutes, and to subject it to the dangerous process of their biennial revision.

“I believe that he who lives to see that result accomplished, as its advocates predict that it will be, will see also the decay of the administration of justice and of the profession to which we belong, and the gradual extinction of those principles of civil liberty which the history of the world shows to be inseparable from the common law.”

CORTLANDT PARKER.

CIRCULAR.

ST. LOUIS, June , 1886.

Dear Sir: At a meeting of the American Bar Association, which took place at Saratoga Springs, New York, in August, 1884, the appointment of a special committee was ordered to take into consideration the subject of delay and uncertainty in judicial administration, and to report upon the subject at the next annual meeting. The committee which was appointed was composed of David Dudley Field, of New York, chairman; John F. Dillon, of New York; Edward J. Phelps, of Vermont; James O. Broadhead, of Missouri; and Richard T. Merrick, of the District of Columbia. Before the next annual meeting of the Association, Mr. Phelps went to England as our Minister to that country; Mr. Broadhead went to France as one of the law agents of the United States touching the French Spoliation Claims; and Mr. Merrick died, so that the report of the committee was signed by two members only, Mr. Field and Mr. Dillon. Subsequently Mr. Broadhead communicated to the committee his unqualified adhesion to the report, and Mr. Phelps telegraphed his adhesion to all the recommendations of the report except that touching the codification of the law.

The report was presented in printed form to the American Bar Association at its annual meeting in August, 1885, was distributed among the members, was debated at great length, and the result was that most of its recommendations were adopted without change, excepting the following: "The law itself should be reduced as far as possible to the form of a statute." It was also ordered that five thousand copies of the

report, together with its appendix, be printed for distribution by the secretary. This appendix embraced numerous letters which had been received by the chairman of the committee in response to a number of questions embraced in a circular sent out by him.

The action finally taken by the Association was, that the whole subject be referred back to the committee; that the committee be reorganized by the president of the Association, and that it report upon the subject at the annual meeting of the Association to take place in 1886. The committee was subsequently reorganized by the president of the Association so as to consist of the following members: David Dudley Field, of New York, chairman; John F. Dillon, of New York; George G. Wright, of Iowa; Cortlandt Parker, of New Jersey; and Seymour D. Thompson, of Missouri.

In order that the committee may be able to present to the Association such a report as that body has the right to expect, it is desirable that it should have the aid of the opinions and suggestions of the members of the Association and of the members of the profession at large upon certain subjects which it is designed to include in the report. These subjects are: 1. The Codification of the Laws; 2. The system of Trial by Jury; 3. The Relief of Appellate Courts; 4. Delays and Uncertainties in the Administration of Criminal Justice; 5. Legal Education and the Qualifications of the Bench and Bar; 6. The Judicial Office; 7. Champertous Engagements by Attorneys. The committee, therefore, beg that you will take time to consider and answer, as far as practicable, the following questions:

I.—THE CODIFICATION OF THE LAWS.

1. In your opinion, is it practicable and desirable to reduce to the form of a statute the entire body of the general rules of the law of rights and remedies, so far as the same have been settled by the decisions of the courts?

2. Is it practicable and desirable to attempt, by the aid of legislation, with or without the aid of a commission, to settle and reduce to the form of a statute those questions of law which are known to be unsettled and disputed?

3. Are there any special subjects in the law which at present rest in judicial decisions only, which might usefully be reduced to the form of a statute? If so, please state what those subjects are and give your reasons for your conclusions.

4. Do you favor the adoption of the resolution pending before the American Bar Association, that the law should be reduced, as far as possible, to the form of a statute?

II.—THE SYSTEM OF TRIAL BY JURY.

1. To what extent, if any, is the existing system of trial by jury responsible for delay and uncertainty in judicial administration?

2. Can any mode other than the existing system of trial by jury be usefully devised for deciding the facts in issue in civil actions? If so, what?

3. Is trial by judge in civil actions a more certain and preferable mode of ascertaining the facts than trial by jury?

4. If the decision of facts were committed to the judge, would it be expedient that he should have the aid of two or more permanent officials, called *assessors*, to assist him in the performance of this function?

5. Does the English system, by which the judge delivers an oral charge to the jury and sums up the evidence, giving them his *advice* as to its weight and value, obtain in your state? If so, is it advisable to abolish this system and to substitute therefor the practice of giving hypothetical instructions in writing, and to prohibit the judge from summing up the evidence, from commenting thereon, and from expressing any opinion as to the weight or probative effect thereof?

6. Does the system of delivering to the jury hypothetical instructions in writing prevail in your state? Is the judge prohibited from charging the jury orally, from summing up the evidence, from commenting thereon, or from advising them as to the weight or probative effect thereof? If so, is it desirable to abandon this system and return to the English practice as indicated in the preceding question?

7. Under any system, should counsel be allowed to address the jury in argument *after* the judge has delivered to them his charge of instructions?

8. Can the practice of requiring the jury to answer special questions be usefully adopted?

9. To what extent should the judge of a trial court have the power to set aside verdicts in respect of the weight of evidence, the amount of damages, and the number of verdicts which have been rendered in favor of the same party on successive trials of the same issue?

10. To what extent should appellate courts possess the same power?

III.—THE RELIEF OF APPELLATE COURTS.

1. Will you please give your opinion in general terms as to the best method of relieving those appellate courts which are "behind with their dockets?"

2. To what extent can the number of judges of an appellate bench be increased without impairing the working capacity of the court beyond the ratio of benefit received?

3. Is it desirable in any case that an appellate bench should be authorized to sit in two or more sections?

4. To what extent is the advice of the supreme court commission practicable or useful in relieving an appellate court which is in arrears in respect of its business.

5. If the constitution of a state provides for a supreme court and gives the legislature power to create inferior courts,

has the legislature any power to create a commission which shall perform a portion of the functions of the Supreme Court?

6. Has the experiment of a commission been tried in your state? If so, please state whether it has worked satisfactorily and whether it has any effect in unsettling the law?

7. As a means of relieving appellate courts of last resort, do you recommend the plan of creating intermediate appellate courts? Has such a plan been tried in your state, and if so, has it worked beneficially?

8. Should the right of appeal in civil cases be unlimited, or should it be limited by reference to the amount in controversy? Would the plan of relieving an appellate court by fixing a pecuniary limit to the right of appeal, or by increasing the limit where already fixed, be just and useful.

9. Should or should not the law provide in every remedial system for the conclusive settlement of the facts in the court of first instance? On appeals in equity, admiralty and divorce cases, should the appellate court be required to examine and determine the facts *de novo*?

IV.—DELAYS AND UNCERTAINTIES IN THE ADMINISTRATION OF CRIMINAL JUSTICE.

1. Do delays and uncertainties in the administration of criminal justice exist in your state? If so, please state in general terms the causes of such delays and your views as to the proper remedy.

2. Have there been any "lynchings" in your state within the last five years? If yea, please state, if you know, what ratio the number of such lynchings bears to the number of capital executions under the sentence of the law?

3. Can the mode of selecting juries in criminal cases, and of charging or instructing juries in criminal trials, which now exists in your state, be improved in any respect? If so, please state fully in what respect, giving your reasons therefor.

4. Can the existing statutes of jeofails be safely enlarged in criminal cases, so as to obviate escapes from justice on technical grounds which do not concern the real question of guilt or innocence?

5. In your opinion, is there any reason for the continued application of the maxim of the common law embodied in the American constitutions, that no man shall be obliged to accuse himself? Ought not the state to have the right to put the prisoner upon the witness stand and to interrogate him touching the matter of which he is accused, but without the power of compelling answers by compulsory process? Ought not the refusal of the witness to answer any relevant questions to be allowed to be considered by the jury as a circumstance affecting the question of his guilt?

6. In those jurisdictions where the accused is allowed to testify in his own behalf, should not the law allow the prosecuting attorney to make the failure of the accused to take the witness stand a subject of comment in his argument before the jury?

V.—LEGAL EDUCATION AND THE QUALIFICATIONS OF THE BENCH AND BAR.

1. To what extent is the education and the want of requisite knowledge, skill and training on the part of the bar responsible for the delay and uncertainty in judicial administration?

2. Have you any suggestions to make touching the better education of the bar and the raising of the standard required for admission to the bar?

3. Is a course of two years' study at a law school an adequate preparation for admission to the bar?

4. Should the power of examining and admitting candidates for the bar be confided to all the superior courts of record in a state, or should it not rather be confided to the highest appellate alone?

VI.—THE JUDICIAL OFFICE.

1. Should the judges be elected or appointed?
2. Should the term of the judicial office be for good behavior or for years? If for years, should the term be long or short, and what, in your opinion, is the proper term?
3. If judges are elected, should the same person in any case be re-eligible?
4. If there are delays in the administration of justice in your state, could not a flexible system be devised by which the appellate court, or courts, might be relieved by calling to the aid of the appellate judges the judges of the trial courts, by rotation or by special appointment, according to their qualifications? And could not the trial courts be usefully strengthened by sending down judges of appeal to sit with the trial judges in cases of great importance or which excite great public interest?

VII.—CHAMPERTOUS ENGAGEMENTS BY ATTORNEYS.

1. Is the practice on the part of attorneys of taking cases on contingent fees injurious to the administration of justice?
2. Should a rule of procedure be recommended which would allow the defendant in a lawsuit to require the attorney of the plaintiff to answer interrogatories touching his contract with his client, thus compelling him to disclose whether or not he is a partner in the litigation?

It is not expected that any one person to whom this circular is sent will take pains to reply to all the above questions. That is not desired. What is desired is that each person who receives the circular shall write replies to such questions as excite in him a special interest, or to such as have been the subject of study and investigation on his part. The committee desire your *best opinions* and your *reasons* for those opinions. Their report may not cover all the subjects embraced in these

questions. This inquiry is experimental. They cannot say whether or not the replies will be published in the transactions of the Association, as was done last year. They will, however, be classified for the information of the committee, and will be presented to the Association as an appendix to the committee's report. As the labor of copying and classifying these replies for the use of the committee will necessarily be great, you are requested to make them as brief as is consistent with a proper expression of your conclusions and reasons therefor. Replies should be addressed to the undersigned, secretary of the committee, *as soon as practicable*.

SEYMOUR D. THOMPSON,
2104 Lafayette Avenue,
St. Louis, Mo.

ANSWERS.

TO QUESTION I.

H. B. Brown, Detroit, Mich. :

Yes.

Rufus King, Cincinnati, O. :

I believe that it is not possible to reduce the whole body of the law to the form of a statute. The question should be: "How far is it possible to codify the law?"

John L. Bridgers, Tarboro, N. C. :

As that portion of the common law which is not inconsistent with the statute law is in force under most of our state constitutions, it should be put in such form that all may know what the common law is in every state. In the decisions many principles are declared, but they lack stability and certainty. The decisions would furnish the substance of the statute, to which could be added such general laws of custom as the framers might think necessary. To prevent judicial legislation is one of the principal objects of codification, such legislation being contrary to the constitutions of the states, which prohibit two legislative tribunals for the same government.

Manuel Eyre, San Francisco, Cal. :

It is. I think the bar universally in California, even those who formerly opposed the adoption of the civil code, are of this opinion.

Henry Wade Rogers, Ann Arbor, Mich. :

Yes.

Alex. Graves, Lexington, Mo :

Nothing is more to be regretted than any attempt looking to reducing the law to the form of a statute.

Frank Goodwin, Boston, Mass. :

No.

Austen G. Fox, New York,

No. Defining of new terms more uncertain than applying the common law.

Egbert Whittaker, Saugerties, N. Y.:

Yes.

Geo. W. Biddle, Philadelphia, Pa.:

I think it is undesirable (as well as impracticable) to attempt to reduce to the form of a statute, or, in a word, to codify the general body of the law.

N. C. Moak, Albany, N. Y.:

Decidedly, no.

Morris M. Cohn, Little Rock, Ark.:

Yes. In the long run, codification does not increase the amount of material to be learned, but greatly lessens it. It makes the law far more accessible to those who have to obey it. In most European countries codification has passed out of the region of debate. Any branch of the law upon which a text book can be written can be codified. Different legal authors have shown that certain branches of the law can be codified.

U. M. Rose, Little Rock, Ark.:

Yes; gradually. Not all at once.

Moses M. Granger, Zanesville, O.;

Do lawyers of average ability and education differ as to any of the great majority of legal principles? Are not the vast majority of the contests in our courts about the application of *undisputed* legal principles? Putting a legal principle in a statutory form will not aid in settling a dispute as to its application to any given state of facts. The fact that the common law is not in the form of a statute protects many common law rules from legislative alteration, of which statutes are much more frequently the subject than the unwritten law.

Daniel H. Chamberlain, New York, N. Y.:

No. If practicable, it would be idle, adding nothing to the force or value of such law and making stiff and unyielding what is now flexible and elastic without being uncertain. The attempt will compel us to litigate for years and years over the meaning of the new statute. A digest is all that is needed.

Jno. Doniphan, St. Joseph, Mo.:

I doubt if it is practicable, and deem it unwise to attempt it at present.

M. F. Force, Cincinnati, O. :

It would be desirable to reduce to the form of a statute the entire body of general rules, etc., if practicable. I doubt if it is practicable to do this at once. The Roman *Corpus Juris*, the masterpiece and exemplar of codification, was the growth of many centuries. The prætorian edict, gradually developed by yearly accretions for several centuries, became a veritable code of one division of the law in the time of Hadrian. But it was nearly four centuries later, and after tentative efforts in intervening reigns, that the codification of the entire body of law was achieved under Justinian.

Furthermore, the law grows as the people grow. Its development keeps pace with their development. It is, indeed, simply a formulated expression of their conception of enforceable rights and duties. Even a code must be subject to continual amendment until society has ceased to develop or change.

Hence, I think (1) a codification of the whole body of the law is too vast an undertaking to begin with ; and (2) some portions of the law are now in too rapid transition to make it worth while to attempt to cast them into the comparatively permanent form of a code.

The method which appears to promise best results, is to select the riper portions of the law and express in orderly arrangement what has been settled in them. These, after some years of experience and revision, may be combined, and by like means, enlarged. What is not settled may be left to be evolved and shaped by the multitudinous discussions of counsel and courts.

The law of contracts in general and of some particular contracts, as agency, bailment, insurance and negotiable instruments, might be usefully reduced to the form of a statute. So, too, perhaps, might equity jurisprudence.

Hence, I favor the adoption of the resolution pending before the American Bar Association, with my understanding of the limitation "as far as possible."

E. T. Merrick, New Orleans, La.:

The civil code of Louisiana, adopted in 1808 and modeled on the code Napoleon, although it directs the courts not to disregard its clear and unambiguous precept under the pretense of pursuing its spirit, has been the subject of much interpretation. The code of practice, adopted in 1824, has also given

rise to an immense amount of litigation to know what it means and still gives rise to perplexing questions. In spite of the repeal of all of the civil law in force prior to the promulgation of the civil code, the *Corpus Juris Civilis* and the French commentators on the code Napoleon are constantly quoted by the courts.

Ita lex scripta est is a broad shield for indolent or unlearned men. In this age in which new discoveries are made, new industries developed almost daily, and immensely numerous and valuable objects are brought within the domain of jurisprudence for adjudication, it is much better to leave it to wise judges to select from the great storehouse of principles such as are fitting the new subjects brought for their determinations. But the important reason why the great body of our common law should not be reduced to codes is that it would produce a greater divergence in the jurisprudence of the different states than now exists. The judges of the states are building up one homogeneous system, the opinions of the courts of one state exerting an influence on those of the others.

Against the crystallization of principles of law into rigid rules of law there has been in all ages a protest sooner or later. Chancery is a protest against the rigid rules of the common law.

Every new code ought to have a special enactment contained in it, requiring the judges to recede from the words of the law whenever they lead to injustice or great inconvenience.

Herman A. Haeussler, St. Louis, Mo. :

Yes.

Jos. B. Cumming, President Georgia Bar Association, Augusta, Ga. :

Desirable and perhaps practicable.

Thos. H. Bacon, Hannibal, Mo. :

Yes. But the first step should be to establish minute legal terminology. We should have a national law academy, composed of learned lawyers, maintained by the general government, and charged with the duty of building up a standard law dictionary, voluminous and exhaustive.

Everett W. Pattison, St. Louis, Mo. :

I cannot see any room for doubt that the codification of such part of the law of rights and remedies, as has been settled by judicial authority, would be both practicable and desirable.

Albert Mathews, New York :

It is neither practicable nor desirable, etc. That part of the law of the land, some portion of which is sometimes loosely said to be "best in judicial decisions only," is in a condition of growth and progress. Its starting-point is the morality and common sense of the people among whom it prevails, and the courts apply its principles. There is no such thing as "judge-made law." The judge finds and applies the law to a particular controversy. A vast mass of judicial decisions of practical questions have accumulated, forming a body of learning, wisdom and experience of incalculable value. The logic of experience has proved others to be unsound and they have perished.

Richard Vaux, Philadelphia, Pa. :

Codification is a dangerous experiment. My experience inclines to reject all codes.

J. Vaughan Darling, Wilkesbarre, Pa. :

It is not desirable, in my opinion.

R. C. Benton, Minneapolis, Minn. :

It is not, in my judgment, practicable, etc. No statute can express the infinite diversity of qualifications which different actions demand in the application of legal principles. To attempt to do so would make of the law a Procrustean bed either too long or too short to properly fit any given state of facts.

R. K. Shaw, Marietta, O. :

It is desirable that the body of the law be codified, that it may be certain.

Gustave Koerner, Belleville, Ill. :

Yes. The common law, as far as practicable, to be subsidiary law, where the code is incomplete.

Norman Paul, Woodstock, Vt. :

No. The facts and questions daily arising in the trial of cases are so varied and different that it would be impossible to cover them by any statute without working injustice to suitors.

L. Prentiss, Cleveland, O. :

I am in favor of codification, but would not favor attempting to sweep away the common law, equity, and admiralty as a whole, but merely to explain and simplify so much as is practicable, leaving the rest as it is.

L. D. Brewster, Danbury, Conn. :

Yes.

Edward C. Eliot, St. Louis, Mo. :

Yes, as an ultimate result. I question the expediency of an attempt to codify the entire body of the law at one time. Codification of the law of pleading and practice has been found practicable. If we were to proceed next to the departments of commercial paper and evidence, then to real estate, and so on, it might be found that the real difficulties in the way of the system would vanish.

Geo. A. Mercer, Savannah, Ga. :

It is extremely desirable. The area of the law is already so vast and is so rapidly widening, that the utmost practicable condensation and precision is demanded. The experience of the Georgia Code shows that codification is practicable and desirable.

C. Suydam Scott, Lexington, Ky. :

It hardly seems to be practicable or desirable to embody the whole *settled* law in a statute. There is hardly enough in Kentucky to be worth printing.

E. P. Green, Akron, O :

Yes.

Jno. D. Gilland, Vicksburg, Miss. :

It is practicable and desirable, etc. This has been partly done in our state and some others.

T. A. E. Weadock, Bay City, Mich. :

No.

Pope Barrow, Athens, Ga. :

We have attempted in Georgia since 1863 to have and keep a code, and the result, so far as my observation goes, is quite unsatisfactory. The work itself must necessarily, in the first instance, be incomplete. In the second, the legislature is continually changing it. In consequence of amendments, our code had to be re-codified in 1868, 1873 and 1882.

The adoption of a code is an invitation to the legislature to make changes in the law. It puts into a changeable form before the eyes of every practitioner the principles of the common law greatly condensed, and therefore with the meaning frequently incompletely expressed. It is the target of every self-constituted reformer. The number of changes made each year in the code have averaged between thirty and forty.

C. C. Baldwin, Cleveland, O. :

If the law is put in the form of a statute, I am afraid that courts must often lose sight of justice, of public policy, and of the valuable chance to change an opinion as to what the law should be. Codes as drawn, as far as my examination of them extends, seem to have been very carefully drawn and with as little prospective hampering of the growth of the law as could well be accomplished. A complete code may prove a blessing. I am afraid of hasty legislation by unwise legislators.

M. F. Morris, Washington, D. C.:

Yes, but codifiers should codify existing laws and substitute certainty for uncertainty instead of, as is too frequently the case, attempting to engraft their own idealistic and perhaps impracticable ideas upon the existing system.

Henry Reed, Philadelphia, Pa.:

Yes, if only a portion of the law is codified at one time.

D. S. Troy, Montgomery, Ala.:

Assuming that the object to be accomplished is to secure speed and certainty in the administration of justice, there can be no doubt, I think, that it is desirable to reduce to the form of a statute the entire body of the general rules of the law of rights and remedies so far as the same have been settled by the decisions of the courts. * * * The rapidly increasing want of harmony among judicial decisions clearly shows that instead of settling principles of law the progress of our jurisprudence is to make them more uncertain. A lawyer, undertaking to trace a legal principle, generally finds it comparatively clear and well defined in the past, but as he approaches the present he finds himself in a labyrinth of judicial decisions, rendering the principle obscure and uncertain. The determination of causes by the last decided case, a rapidly growing practice, leads to a gradual variation from the rule of the earlier cases, until, in order to get back to the true principle, several of the decisions have to be overruled. * * * It is the business of a judge to decide controversies between individuals; of the legislator to settle principles of jurisprudence. * * * It would perhaps be well to adopt the Chinese plan in so far as to declare by statute that one decision should not be considered as having any bearing whatever in determining how the next or any other case should be decided.

R. W. Boyd, Darlington, S. C.:

I am satisfied that it is practicable to satisfactorily reduce the whole body of the laws to the form of a statute, and further, I am satisfied that such codification would facilitate the administration of justice, would largely decrease litigation and would be a great saving of expense to the people, as long as it could be protected from being tampered with by the legislature. Just here, however, comes the fear that "gives me pause." The great body of the law is a *terra incognita* to all except lawyers. Reduce it to the form of a statute, make the whole of it readily accessible to those who are not lawyers, and attract public attention to its every detail, and will not the best security for its permanence and uniformity be gone? Will there not be constant efforts to improve it in every province? Will it not in time reach a state of uncertainty which will be more productive of litigation than is now complained of? I fear consequences such as these and I am not in favor of any general codification of the law. There are, however, special subjects in the law affecting the daily business of the people that might be usefully, and without danger of ill consequences, reduced to the form of a statute.

Gaylord B. Clark, Montgomery, Ala.:

I think it is desirable, etc. The practicability I seriously doubt.

D. G. McIntosh, Towson, Md.:

My mind strongly inclines in the direction of an earnest effort towards codification of the laws as understood and expressed by the most pronounced among its advocates.

Joseph A. Wing, Montpelier, Vt.:

Our legislature has at times tried to simplify the law, but the result has not been favorable; where they make a statute that has conflicted with the common law it has taken years to tell what the law meant; how it would be under a code covering the whole ground I am not able to say.

Augustus E. Willson, Louisville, Ky.:

Yes.

Jas. O. Pierce, Memphis, Tenn.:

It is desirable. Whether practicable, *quære?*

TO QUESTION II.

Manuel Eyre, San Francisco, Cal.:

It is with the aid of a commission; otherwise I think it impracticable.

Henry Wade Rogers, Ann Arbor, Mich.:

Yes.

John L. Bridgers, Tarboro, N. C.:

Yes, by a commission, who could derive much valuable assistance from the profession at large.

Frank Goodwin, Boston, Mass.:

Yes.

Austen G. Fox, New York :

No. It is not the question whether a rule of law exists but its application that is most uncertain.

Augustus E. Willson, Louisville, Ky.:

I think not. Less legislative judgment the better.

Egbert Whittaker, Saugerties, New York :

Yes, with a commission.

N. C. Moak, Albany, New York :

No.

Morris M. Cohn, Little Rock, Ark.:

I think a commission of competent persons could so far settle many disputed questions, as a clear enunciation of principles would contribute to that end.

U. M. Rose, Little Rock, Ark.:

Yes. A commission would be necessary.

Daniel H. Chamberlain :

It is not desirable or practicable, etc. To reduce these questions to the form of a statute is to cripple our legal progress and growth, to make our law mechanical and not natural, and to give it over to the hands of legislatures, which, as a rule, are not qualified to deal with it.

Herman A. Haeussler, St. Louis, Mo. :

Yes.

Joseph B. Cumming, Augusta, Ga. :

Yes, with the aid of a commission.

Thomas H. Bacon, Hannibal, Mo. :

Yes ; not by a temporary commission, but by a permanent law college established and maintained by the state for the sole purpose of ascertaining and formulating and recommending organic and statutory provisions.

Everett W. Pattison, St. Louis, Mo. :

It should be done through a commission divided into sections, each section taking charge of a separate branch.

Albert Mathews, New York, N. Y. :

What is not settled can better be determined in some actual controversy, by contending lawyers and a real decision by a trained expert sitting under the obligations of a judicial function, than by one or more lawyers on a commission or a legislative committee or a popular vote conjecturing a rule to meet a supposititious case, or voting blindly under the influence of some colossal legal reputation.

J. Vaughan Darling, Wilkesbarre, Pa. :

It is not desirable or practicable.

Andrew T. McClintock, Wilkesbarre, Pa.

I do not think it is desirable, etc. Such questions, in my opinion, are much more satisfactorily settled as they arise by the court of last resort. The attempt, if made, should be with the aid of a commission, otherwise litigation will be increased rather than diminished.

H. W. Palmer, Wilkesbarre, Pa. :

I concur in the above.

L. D. Brewster, Danbury, Conn. :

Yes, with the aid of a commission.

C. Suydam Scott, Lexington, Ky. :

I do not favor an attempt to settle by statute the open questions of the law ; but if it be attempted, I believe it should be done by the aid and guidance, closely followed, of as able a commission as could be obtained.

E. P. Green, Akron, O. :

Yes, with the aid of a commission.

John D. Gilland, Vicksburg, Miss. :

The unsettled and disputed questions of law should be settled and reduced to the form of a statute.

T. A. E. Weadock, Bay City. Mich. :
No.

Pope Barrow, Athens, Ga. :

It may be practicable by arbitrary power of the legislature to reduce to the form of a statute unsettled and disputed questions of law, but I do not think it desirable.

Gaylord B. Clark, Montgomery, Ala. :

I think it is desirable and practicable that the legislature should settle with the assistance of a commission questions of law which are known to be unsettled and disputed.

D. G. McIntosh, Towson, Md. :

I am fully persuaded that any successful effort in this direction must be made through and with the aid of a commission. Neither state legislatures nor Congress are competent to deal with the subject. What seems to be generally desired is that the law of the different states should be made to harmonize, especially as it affects mercantile contracts and usages. But whether this would be promoted by each state enacting for itself its own system of statute law to govern such matters, is at least doubtful, and I incline to think a wider divergence would be produced thereby than exists by adhering to the common law. Apart from this difficulty, it seems to me that all subjects which may be said to be chiefly within the office of and to affect the citizens of a single state should be reduced to the form of a statute.

Joseph A. Wing, Montpelier, Vt. :

If a code was to be established it should be by a commission of experienced lawyers, who should take time and weigh well the bearing of each conclusion, and then it would take years to settle the meaning of the same.

James O. Pierce, Memphis, Tenn. :

It is both practicable and desirable to attempt it, but only by the aid of a commission. Such settlement should not be attempted without the active assistance of the judiciary. The proper form will be for the judicial department of the government, which is alone concerned with jurisprudence, to indicate what questions now disputed can profitably be settled, and how; and for the legislative department to give its sanction to the views of the judiciary.

TO QUESTION III.

Manuel Eyre, San Francisco, Cal.:

Yes. Take the very able paper read at our last meeting by Mr. Rawle, on Car Trust Securities. Such investments which should be the most stable have been made unreliable by the conflicting decisions of the courts. I feel sure that Mr. Rawle could, in a very short time, prepare a code governing car trust securities which would render the law simple, positive, and unmistakable.

John L. Bridgers, Tarboro, N. C.:

Among others, the law of evidence rests entirely in the decisions of the courts. It should be reduced to a uniform and certain rule. The law of common carriers is also very unsettled and greatly needs reduction. Likewise the general law of contracts.

Austen G. Fox, New York:

There may be some (possibly bills and notes); but I doubt it.

Morris M. Cohn, Little Rock, Ark.:

I think that so much of mercantile law as relates to bills of exchange, promissory notes, checks, bills of lading, assignments for creditors, insurance, partnership, fraudulent conveyances, sale and delivery of personal property, and criminal law and procedure, may be usefully codified. Many branches of the law have already been codified. Sir Frederick Pollock has shown that the law of partnership can be codified; Mr. Chalmers has shown the same regarding bills of exchange and notes, etc. etc.

U. M. Rose, Little Rock, Ark.:

All the branches of mercantile law and evidence.

Daniel H. Chamberlain, New York, N. Y.:

There are no special subjects now resting in judicial decisions which in my opinion can be usefully reduced to the form of a statute. (1) Because we have no persons equal to the task. (2) Because such attempts would unsettle rather than settle, increase rather than check, litigation.

Simeon E. Baldwin, New Haven, Conn.:

Yes. Among others, notes and bills. The rules are numerous and perplexing but generally settled in each of the older states. Merchants should have them in plain language. Marine and fire insurance, evidence and pleading could also be codified.

Thomas H. Bacon, Hannibal, Mo. :

Practice rules should be minutely statutory, because practice rulings are seldom appealable. Evidence rules should be minutely statutory, because the points raised give no time for investigation. The law of marital incompetence is the product of gross legal incompetence.

Albert Mathews, New York, N. Y. :

Statute law has a province large and necessary in spite of its inevitable evils, arising out of the absence of indefinite forethought and the infirmity of language in its promulgators. But when it has trespassed beyond its proper function it has always been regarded by lawyers of learning and wisdom as the prolific mother of uncertainty and litigation. It is the legitimate means of regulating whatever is arbitrary, modal and purely politic in the law, and as the useful form of enforcing the popular will in a change of the law or as formulating what shall be deemed crimes and offences against public morality or decency or what is necessary for the preservation of good order, health and peace in the community. Outside of such subjects I cannot believe it would aid the administration of justice while I feel sure that it would put a stop to the growth and development of judicial wisdom.

J. Vaughan Darling, Wilkesbarre, Pa. :

None.

Edward C. Eliot, St. Louis, Mo. :

A codification of the law of pleading and practice has been found practicable. If we were to proceed next to the departments of commercial paper and evidence, then to real estate and so on, it might be found that the apparent difficulties in the way of the system would vanish.

George A. Mercer, Savannah, Ga. :

A very important modern subject growing into great practical consequences—receiverships, particularly those of corporations—appears to rest in judicial decisions only and might be usefully reduced to the form of a statute.

C. Suydam Scott, Lexington, Ky. :

I do not recall any, our statutes having, it seems to me, been too comprehensive and meddlesome in some quarters already.

E. P. Green, Akron, O. :

Yes ; many questions relating to negotiable paper.

Pope Barrow, Athens, Ga. :

It is possible that the law of inheritance of estates and real estate might successfully be reduced to the form of a statute. The temptation to tamper with them is small, and the chances are that they would be allowed to repose quietly where the codifiers left them.

Henry Reed, Philadelphia, Pa. :

Yes, if only a portion of the law is treated at one time.

D. S. Troy, Montgomery, Ala. :

I am of the opinion that some other mode than judicial decisions must be adopted to determine and settle the principles of law, if we are to have a jurisprudence which will meet the wants of the present civilization. * * * Unless the courts of last resort are deprived of the function of declaring general principles of the law of rights and remedies, the attempt to reduce the law to the form of a statute would increase the evils from which we are seeking to escape. * * * It would be well to require the judges of courts of last resort to put into the form of a statute any modification of or addition to the general rules of law, the necessity or propriety of which was suggested by the cases tried before them, and to have these proposed statutes submitted to the law-making power. In this way the services of the judges in perfecting a system of jurisprudence would be retained without the evils now necessarily incident to it. * * * There ought to be now in each state and also in the federal government a permanent commission on codification, composed of one or more men learned in the law, selected with special reference to the work to be done, and all statutes proposing changes in the general rules of the law of rights and remedies should be submitted to this commission before enactment by the legislature. The necessity of such commission would be much greater under the system suggested than it is now. However perfect the first work of codification might be, we would soon have again an incongruous mass of disjointed statutes and of conflicting decisions also, if the courts are allowed to declare the law.

D. G. McIntosh, Towson, Md. :

Among subjects proper for codification are the rights and remedies growing out of the relation of landlord and tenant. It is a subject of every-day occurrence, affecting a large proportion of every community, and the law ought to be in such

shape as to be easily accessible and intelligible as well to the layman as to the professional inquirer. The law in some and possibly in most of the states is found partly in acts of the state legislature, partly in old English statutes made of force here, but by much the larger part in English and American decisions and text-books, to explore which the amount involved does not justify. * * * Suppose we are called upon to state so simple a thing as what is exempt from distress for rent or arrear. We must first look to see what is specially exempt by statute, and next what are the common law exemptions. Then we must decide whether the circumstances surrounding are such as to warrant the claim of exemption, and to determine this we may have to go further still and ascertain whether the principle on which the particular exemption is supposed to be founded was established for the benefit of the trade or for the preservation of the peace. * * * Among the subjects whose codification is most to be desired, I think, are those of highways, and the law governing travel over them, and their repair, and the rights of co-terminous owners; also, the law of carriers, of bailments and similar subjects.

TO QUESTION IV.

Manuel Eyre, San Francisco, Cal.:

Most emphatically. No one who has practised in a code state could answer otherwise.

Matthew P. Deady, Portland, Ore.:

I do, for reasons so often and so well stated by Mr. David Dudley Field.

Henry Wade Rogers, Ann Arbor, Mich.:

Yes.

Alexander Graves, Lexington, Mo.:

Emphatically, no.

Augustus G. Willson, Louisville, Ky.:

Yes, as far as settled.

Austen G. Fox, New York:

No. What may be possible is not necessarily desirable.

Egbert Whittaker, Saugerties, New York:

Yes.

George W. Biddle, Philadelphia, Pa.:

I think it very undesirable to reduce to the form of a statute, or, in a word, to codify, the general body of the law.

N. C. Moak, Albany, New York:

No.

Morris M. Cohn, Little Rock, Ark.:

I do.

U. M. Ross, Little Rock, Ark.:

Yes.

Moses M. Granger, Zanesville, O.:

I do not favor the adoption of the resolution.

Daniel H. Chamberlain, New York, N. Y.:

I do not favor it.

William L. Gross, Springfield, Ill.:

I do not favor it. However desirable in theory general codification may appear, it is not desirable that a system of law of long standing and general adjudication should be disturbed except in so far as it may be necessary to bring it into harmony with established or recognized legal principles.

Herman A. Haeussler, St. Louis, Mo.:

Yes.

Joseph B. Cumming, Augusta, Ga.:

Yes.

Simeon E. Baldwin, New Haven, Conn.:

Yes, if the meaning of *possible* be not stretched too far.

H. B. Brown, Detroit, Mich.:

Yes.

J. Vaughan Darling, Wilkesbarre, Pa.:

I am opposed to the adoption of the resolution.

R. C. Benton, Minneapolis, Minn.:

I am not in favor of it.

R. K. Shaw, Marietta, O.:

I am in favor of reducing all the laws possible into the form of definite rules similar to statutes.

Gustave Koerner, Belleville, Ill.:

I favor the adoption of the resolution that the law should be reduced as far as possible to the form of a statute.

Norman Paul, Woodstock, Vt.:

I do not.

L. Prentiss, Cleveland, O.:

I favor the passage of the resolution.

H. W. Palmer, Wilkesbarre, Pa.:

I do not favor the adoption of the resolution.

Andrew T. McClintock, Wilkesbarre, Pa.:

I do not favor the adoption of the resolution.

L. D. Brewster, Danbury, Conn.:

Yes.

George A. Mercer, Savannah, Ga.:

I favor the passage of the resolution.

E. P. Green, Akron, O.:

I do favor the resolution.

John D. Gilland, Vicksburg, Miss.:

I do favor the adoption of the resolution.

T. A. E. Weadock, Bay City, Mich.:

No.

Pope Barrow, Athens, Ga.:

I do not favor the adoption of the resolution.

M. F. Morris, Washington, D. C.:

I favor the adoption of the resolution.

Henry Reed, Philadelphia, Pa.:

Unless qualified, no.

D. S. Troy, Montgomery, Ala.:

I favor the adoption of the resolution.

Daniel H. Chamberlain, New York, N. Y.:

I am unqualifiedly opposed to the adoption of the resolution now pending before the American Bar Association. It is, in my opinion, the *last* folly and presumption.

C. Suydam Scott, Lexington, Ky.:

I do not favor said resolution. A statute is too much on the *ipse dixit* order—gives no reasons; and my notion, based on experience, is that the reason of the law ceasing, or ceasing to appear, the law itself follows the old maxim and “itself ceases” from the memory of the student. The study of statutes always struck me as too much like consecutive reading of a dictionary—impossible, or nearly so, to be remembered.

Gaylord B. Clark, Montgomery, Ala. :

I do favor the adoption of the resolution.

J. L. Robards, Hannibal, Mo. :

I do, because it is both practicable and desirable.

James O. Pierce, Memphis, Tenn. :

Yes.

JURY TRIAL.

TO QUESTION I.

Rufus King, Cincinnati, O. :

The shortcomings of the jury system are functional, not organic. The jury is no longer what it was nor what it ought to be. Instead of being composed of the peers, it has, by the shirking of business men and the yeomanry, degenerated into a sort of eleemosynary refuge for the impecunious. If this service be made as compulsory as military conscription, it will, as Blackstone boasted, "preserve in the hands of the people that share which they ought to have in the administration of justice and prevent the encroachments of the more powerful and wealthy citizens." This warning should be heeded by all who would abolish the jury either in civil or criminal causes. And when parties have the choice of submitting the trial to a judge, why abolish the jury? * * * The most effectual way of mitigating the evils of the modern jury trial is probably the presentation of special issues fixed by counsel and subject to the correction of the court, thus directing and confining the jury to the material and specific points of a case. Special pleading fairly practised would accomplish the same results, but not so certainly abbreviate the prolixity of jury trials.

M. F. Force, Cincinnati, O. :

Trial by jury does not always cause delay. Sometimes the discussion in the jury room brings about a verdict in a few hours, while the same case, if heard on submission, would be held under advisement by the judges for weeks. Still, trial by jury is responsible for some of the delays of litigation.

Some delays are inherent in this mode of trial—as the time taken in empaneling a jury, sometimes very little, but sometimes very serious—the time often taken in explaining to the

jury the rules of evidence to prevent prejudice rising in their minds from the failure of a party to offer evidence legally incompetent; the multiplication of error, and hence of reversal, by off-hand rulings at *nisi prius*; and the time lost in trials in which the jury fail to agree.

Other delays are due to rules which prevail in some states, as where the judge is not allowed to direct a verdict or express an opinion upon the evidence when there is a scintilla, though the evidence be so clear that any verdict but one will be surely set aside; where the judge must charge the jury hypothetically, no matter how difficult it may be to frame more than one hypothesis consistent with the evidence; and where the reviewing court reverses if evidence has been excluded which might have influenced the jury to render a different verdict, though the reviewing court is satisfied the evidence ought not to have that effect.

It is sometimes an advantage to submit questions to be answered by the jury in addition to the general verdict.

It is an advantage to charge the jury before argument upon points requested by counsel; but there should certainly be no arguments after the general charge.

The trial judge should have power to set aside verdicts when they are clearly against the weight of evidence; where the damages are a matter of calculation according to a determinate rule, and the amount of the verdict is erroneous; also where the amount is flagrantly excessive; if the verdict is clearly wrong, it should be set aside as often as it is so rendered. It is a convenient practice, in case of an excessive verdict, to let it stand for a named reduced amount if the prevailing party will agree to the remittitur.

This power of the trial judge should be possessed also by the appellate court where there is but one; but only by the intermediate appellate court where there is one.

Austen G. Fox, New York:

The existing system of trial by jury is responsible for delay and uncertainty in judicial administration principally in the admission of irrelevant testimony and the unwillingness of judges at circuit to nonsuit or direct a verdict. A defendant should have the right to move the court to enter a nonsuit even after verdict, *non obstante veredicto*. Then a pregnant cause of frequent new trials would not exist. The plaintiff would prove his case and stand or fall by it. Now after

reversals, parties make their evidence in new trials conform to the *opinion*, a cause sometimes of perjury, or something very like it. New trials for surprise and newly-discovered evidence must remain.

Manuel Eyre, San Francisco, Cal. :

In our state there is a wide-spread feeling that in important cases juries may be and are tampered with. Special issues are submitted to juries and the court not bound by the verdict thereon. Trials are more expensive and consume more time.

N. C. Moak, Albany, New York :

Not at all. It takes no longer to try a case before a jury than before a judge without one.

U. M. Rose, Little Rock, Ark. :

I think that but few civil cases ought to go to a jury, and those to a jury of three men specially selected on account of their intelligence and knowledge of the practical affairs of life. Our present system is a relic of barbarism.

William L. Gross, Springfield, Ill. :

It is largely responsible. It is cumbersome and unwieldy. The court moves and can be moved with celerity, while the ponderosity of the jury, its general unfitness for the intelligent discharge of the duties imposed upon it, the necessary concurrence of twelve men, generally stupid and ignorant men, and the irresponsibility of the individual jurymen, to say nothing of the always hours and sometimes days consumed in its selection in closely contested cases, render its use and movements fearfully slow—a veritable time-killer. That the results produced by trial by jury are uncertain and generally unsatisfactory is the common observation and experience. * * * Considering the character of the average American jurymen, the manner of his selection, the inquiry as to his qualifications in the particular case, the right of challenge, the inflexible rule of concurrence and the absence of personal responsibility, no more illogical system could be devised.

Norman Paul, Woodstock, Vt. :

In Vermont there is no complaint of the delays in the trial of cases; there is ample time at each session of the several courts to dispose of all the business that is brought before them.

L. Prentiss, Cleveland, O. :

The system of jury trials is responsible for a large part of the delay and uncertainty of judicial administration.

James O. Pierce, Memphis, Tenn. :

The fallacy that only the unanimous opinion of twelve men can safely settle a disputed question of fact causes a great part of the "delay and uncertainty." Juries might well be of any number, from five upwards, in civil causes. In England, five is lawful. A majority verdict should be received in all civil causes.

Andrew T. McClintock, Wilkesbarre, Pa. :

Delays in judicial administration arise from so many causes that they can hardly be properly charged to the system of trial by jury. Much of the delay arises from tedious examinations and cross-examinations of witnesses, and the wish of one or the other of the parties to postpone trial as long as possible. Uncertainty in judicial administration is one of the incidents of fallible humanity, and is not as great as is often alleged. The vast majority of cases are fairly disposed of with reasonable promptness and as much certainty as can reasonably be expected from the fact that neither judges, counsel nor juries are infallible.

Edward B. Sturges, Scranton, Pa. :

I believe that they are in very many cases a "delusion," etc. We all know that to such bodies—largely composed of men who could not be trusted to run a peanut stand at a circus—are entrusted many of the most intricate questions that our complicated civilization creates. These men do not understand the witnesses, the case or the judge. I had a case some time since in which, after a two days' trial, on call of the vote for a verdict, several had to ask which was plaintiff and which defendant, the vote being finally taken as between the "old man" and the young one.

Edward C. Eliot, St. Louis, Mo. :

Jury trials are partially responsible for the delay and uncertainty, etc. It is a fact familiar to the profession that lawyers with good cases have little use for juries.

George A. Mercer, Savannah, Ga. :

I consider the existing system of trial by jury responsible to a large extent for delay and uncertainty in judicial adminis-

tration. Jurors come fresh from the people, and reflect their prejudices and passions. The requirement of unanimity in civil causes confers upon the juror an opportunity to make a mistrial. The growing frequency of mistrials, especially in cases involving the rights of corporations, or the feelings of guilds and trades unions, is a practical evil experienced by every practising lawyer.

Henry S. Neal, Ironton, O. :

The system of trial by jury, in my opinion, is not responsible for the delay and uncertainty in judicial administration. These are more often the result of the ignorance, indolence or incompetence of the judges than of the juries. The system of selecting juries (in Ohio) can be vastly improved upon so that more intelligent men of the orderly and educated classes shall be selected.

C. Suydam Scott, Lexington, Ky. :

Jury trials are to a very great extent responsible for delays in judicial administration, causing uncertainty, and eventually much delay. Jury trials strike me as more nearly "games of chance" than some illegal ones.

E. P. Green, Akron, O. :

I think that the cases now tried with a jury require or rather take twice the time that they would if they could be tried by a judge and two "assessors" sitting with him

T. A. E. Weadock, Bay City, Mich. :

Trial by jury is responsible for much delay and uncertainty in judicial administration by necessitating the system of terms of court, requiring long periods of service from jurymen, thus eliminating the best men from the panels, defective returns leading to challenges; defective modes of selection producing inferior men.

Pope Barrow, Athens, Ga. :

More than half the time in this state is consumed in and about the juries.

C. C. Baldwin, Cleveland, O. :

I think the system of trial by jury is very largely responsible for the delay and uncertainty of judicial administration; uncertainty, because the deciding tribunal is unlearned in the law and inexperienced in decision, and therefore liable to mistakes, misapprehension and prejudice; delays, because these

mistakes must be corrected by a slow process of revision, and because the business would be much better done by judge or judges. There is also litigation brought and consuming time, which has hopes in inexperience and prejudice, which would not hope in experience and learning.

Matthew Hale, Albany, N. Y. :

In my opinion, the existing system of trial by jury is very largely responsible for delay and uncertainty in judicial administration.

M. F. Morris, Washington, D. C. :

I have no hesitation whatever in saying that it is the most disgraceful feature of our jurisprudence and the worst relic of mediæval barbarism. Under this system, a premium is placed on ignorance. The more ignorant a man is, the more is he qualified to act as a juror. An intelligent acquaintance with current events and the periodicals of the day and the formation of an intelligent opinion are very generally absolute disqualifications for service upon a jury. Especially in the cities does it happen that the best citizens avoid and escape jury service and the worst elements in society seek and obtain it. Every honest lawyer will admit that while there are sometimes, perhaps frequently, enough intelligent and upright men upon juries, an "*intelligent jury*," as a whole, is a rare exception. And yet these bodies of organized ignorance have to sift the most complicated questions of evidence, and their determination is a mere guess. And yet subject to a guess by twelve ignorant men we hold our property, our liberty and our lives. Then, again, in the course of jury trials, the judge is called on the spur of the moment to solve the most difficult questions of law, and he must solve them immediately, and if he does not solve them correctly a new trial must be the result. * * * I will say nothing of the exceedingly common practice of "fixing juries"—in other words, of bribing or packing juries—so notoriously frequent in all the large cities of the Union.

Henry Reed, Philadelphia, Pa. :

Not greatly, but reform is possible.

R. W. Boyd, Darlington, S. C. :

Without great modifications of our criminal law, trial by jury should be preserved in criminal cases. Our criminal laws are rather savage in all the states and the penalties so heavy for the offenses that it is in the interest of humanity that, as

is the case, about one out of every hundred guilty men should be convicted. Trial by jury admirably accomplishes this humane result. In civil cases in which it is important that justice should be done, trial by jury should be abolished. No plan has been devised by which with any certainty an impartial and intelligent jury can be secured. The verdict of even an impartial and intelligent jury is largely under the control of circumstances and influences that should not affect it. A shrewd, earnest and popular lawyer need never despair of securing a verdict however overbearing the weight of the evidence against him. The system of trial by jury adds very largely to the power of lawyers, and it should not surprise that they generally laud and sustain it, but confidence in it as a means of securing justice and respect for it is no more to be found among just and observant people outside of our profession.

E. T. Merrick, New Orleans, La.:

In civil cases I do not think the jury system with us is chargeable with judicial delays, for nine jurors can return a verdict and thus mistrials are avoided. The causes which are tried before judges alone under our system occupy quite as much time, but I have no doubt that justice can be as well attained in ninety-nine cases out of one hundred without a jury as with one. In the state courts of New Orleans, probably, that is not far from the ratio so tried by the court. Juries in those cases must be specially prayed for in civil causes, and in suits on promissory notes and unconditional obligations, the prayer for a jury must be accompanied by an affidavit. In addition, twelve dollars for jury fees have to be deposited.

Herman A. Haeussler, St. Louis, Mo.:

Not at all. The want of backbone in *nisi prius* judges is the main fault.

Joseph B. Cumming, Augusta, Ga.:

Very largely.

Simeon E. Baldwin, New Haven, Conn.:

Largely.

Thomas H. Bacon, Hannibal, Mo.:

To a slight extent only. After mistrial two-thirds should decide in civil cases.

H. B. Brown, Detroit, Mich.:

I think it is responsible for by far the largest part of it.

Everett W. Pattison, St. Louis, Mo.:

I should hesitate to return an affirmative answer. I must admit that on numerous occasions in my professional career I have inveighed against the jury system. It is manifestly an imperfect system. Undoubtedly it often works injustice. But the difficulty is to find a practicable substitute, one that shall produce less of injustice. I am not prepared to say to what extent the existing system is responsible for delay and uncertainty in judicial administration. That a part of this delay and uncertainty is due to the necessity of settling the facts is probably true. Whatever the method adopted to this end such delay and uncertainty would obtain. Would the delay and uncertainty be less if the facts were settled by some other mode than that of trial by jury? I am not prepared to say that they would.

J. Vaughan Darling, Wilkesbarre, Pa.:

The existing system of trial by jury is, in my judgment, responsible for much of the delay and uncertainty in the administration of justice. The increasing ignorance of jurors, their susceptibility to appeals to their passions and prejudices, the growing antagonism between the non-working classes and those who, by their thrift, have attained a competency or some larger measure of success, and the lower character of the profession, in which may now be found many lawyers who do not scruple to make such appeals, and to excite the class prejudice referred to, and the growing unwillingness of a part of the judiciary to control the jury, are some of the elements out of which arise the delay and uncertainty in judicial administration.

R. C. Benton, Minneapolis. Minn.:

My own experience is that the system of jury trial is not responsible for any delay in judicial administration. It cannot be said that the results of a jury trial are more uncertain than other decisions. Indeed, one of the greatest objections to jury trials is that they are apt to be too certain in certain classes of cases.

R. K. Shaw, Marietta, Ga.:

No undue portion of uncertainty and delay is caused by jury trial.

Gaylord B. Clark, Montgomery, Ala. :

I think the jury system is very little responsible for the delay in the administration of justice. As to the uncertainty which it occasions in judicial administration, I do not consider the average jury a factor in ordinary cases. In complicated or important cases, or those wherein the public prejudices are aroused, I think the employment of a jury does add to the *uncertainty* of the decision in the case.

Jos. A. Wing, Montpelier, Vt. :

They try but few jury trials in Vermont now; not one-third what they did six years ago. Some terms of the court they try but one or two cases, where formerly they tried fifteen or twenty. The legislature, a few years ago, passed a law that if parties would submit their case to referees, one, two or three, and pay the state the sum of \$6, the same as the jury fee, the state would pay the referee's fees. Under this law, parties generally choose to select referees, who fix the time of hearing, and try the case at their leisure, in their own neighborhood, instead of hanging around the court and trusting to a jury trial. It is a great saving to the state, as to run a court does not cost less than \$100 a day, while the referee's fee, generally if but one, does not exceed \$10 per day. I do not think the jury system in this state really causes much delay.

Augustus E. Willson, Louisville, Ky. :

It hardly seems responsible for the uncertainty, but it is responsible for much delay. The responsibility for the uncertainty is not to be laid on the jury alone of human institutions. It is common to all things human.

QUESTION II.

Manual Eyre, San Francisco, Cal. :

Except in civil damage cases I think a trial by the court is more certain and preferable. Our statute requires findings by the court, unless waived by all parties, and the trial and result are more satisfactory than with a jury, being speedier and less expensive.

Gustave Koerner, Belleville, Ill. :

Trial by jury in civil cases ought to be abolished, because it is cumbersome, expensive, highly dilatory and in many cases entirely unsatisfactory, particularly in large cities, where the

institution is liable to be thoroughly corrupted. It can, however, be dispensed with only by abolishing the one judge system. In all courts of general jurisdiction there ought to be at least three judges. The additional salaries will not cost the state nearly as much as jury trials. If in criminal cases juries are retained, no juror should be excused unless he has made up his mind from reliable sources as to the guilt or innocence of the accused, which opinion is so fixed and settled that evidence would hardly remove it. Unanimity ought not to be required, but to prevent hasty verdicts the following system which is understood to have been adopted in some of the English colonies and to have worked well, is recommended. A verdict rendered within twelve hours after the retirement of the jury must be unanimous, within eighteen hours must be rendered by nine, within twenty-four by eight, after that seven will do. The jury in criminal cases not to fix the punishment.

Austen G. Fox, New York, N. Y. :

No.

Egbert Whittaker, Saugerties, N. Y. :

It is best for the country to continue it. I admit evil and delay consequent to it. The number ought to be below six.

N. C. Moak, Albany, N. Y. :

I know no better.

QUESTION III.

Morris M. Cohn, Little Rock, Ark. :

I favor the judgment of a majority of five or seven persons as the fit judgment of a jury on questions of fact. The number twelve should cease to have archaic sacredness in law. But I am opposed to abolishing the use of a jury as thus constituted, because it is the means of keeping the average citizen posted in the affairs of the courts and of bringing into contact with the courts the judgment of those members of the community who compose the majority and whose views in a large measure prevail in legislation.

James O. Pierce, Memphis, Tenn. :

Yes. Various modes: *e. g.*, smaller juries; majority verdicts; referees; assessors.

Augustus E. Willson, Louisville, Ky. :

No.

William L. Gross, Springfield, Ill. :

Yes. The court. The litigant who only asks for what is right and just under the law wants no jury to determine the facts. He prefers the upright, intelligent, skilled, responsible judge; the man whose education and mental training have fitted him above most of his fellows to consider and weigh questions affecting the credibility of witnesses, the relevancy and materiality of testimony according to known rules and whose conclusions are reached by logical processes. The judge sitting as the trier of the facts may do many things the jury may not do—he may take and preserve notes of the testimony and use them; he may call for further proof upon any doubtful point; to meet this demand, adjournments may be had whenever necessary; he can pass speedily from one case to another—in short, he can work out justice with far greater certainty and celerity than is possible by any known method. He is strikingly distinguished from the jury as a trier of facts, in that he brings to the discharge of that duty integrity, accountability, intelligence, experience, impartiality, and established methods recognized by reason, logic, and law.

Gaylord B. Clark, Montgomery, Ala. :

For deciding disputed facts, I consider a trial by jury in the average cases equal to anything that could be devised for attaining the ends of justice.

Herman A. Haeussler, St. Louis, Mo. :

No.

Thomas H. Bacon, Hannibal, Mo. :

No. Only modification.

Everett W. Pattison, St. Louis, Mo. :

I am forced to admit that, notwithstanding all my prejudices against the jury system, I am not sure that trial by the court is any more satisfactory. I believe if, for the decision of the facts in the miscellaneous cases that appear upon the docket of our courts, I were forced to choose between a body of fairly intelligent business men or mechanics and a single judge, that I would prefer to take my chances with the twelve. I cannot, however, see any good reasons for clinging to the practice of requiring unanimity in the decision of a jury.

J. Vaughan Darling, Wilkesbarre, Pa. :

Yes. The submission of specific questions; the selection of special juries; the extinction of the present custom of

excusing all men of means from serving upon juries and if possible the introduction of some educational qualification and extension of the right to challenge in civil cases, are some of the more obvious improvements that might be applied to the present jury system.

Andrew T. McClintock, Wilkesbarre, Pa. :

I know of no better mode for deciding facts at issue in civil cases than that by judge and jury. In complicated cases some such mode of procedure as that suggested by Mr. Biddle in his address of last year might facilitate the disposition of such cases, relieve the courts, and secure possibly more correct results.

R. C. Benton, Minneapolis, Minn. :

While I appreciate the very serious defects of jury trials, I know of no better mode of deciding issues of fact, either in civil actions or criminal proceedings.

R. K. Shaw, Marietta, O. :

I know of no better mode of deciding facts.

Norman Paul, Woodstock, Vt. :

I think a large proportion of civil cases can be better tried by referring them to some person versed in the law to hear and determine them than by submitting them to a jury.

L. Prentiss, Cleveland, O. :

I think a trial by judge or judges of the facts every way preferable; but with a provision for calling a jury of experts not exceeding six in cases involving mechanical or other questions requiring special knowledge and experience.

L. D. Brewster, Danbury, Conn. :

A lottery would be more certain. Any arbitrator better if a capable person.

Edward C. Eliot, St. Louis, Mo. :

While the right to a jury trial should be preserved for certain classes of civil actions, it would not be difficult to attach to it such a burden of inconvenience or expense as would by the voluntary act of the parties throw nine-tenths of the cases to a submission before the court or assessors. The privilege to parties to agree upon a referee of the facts might be desirable, such referee acting in court under instructions as a jury would act.

George A. Mercer, Savannah, Ga. :

I think that the facts in issue in civil cases can be more speedily and intelligently decided by a bench of from three to five judges, of whom a majority would control. If these judges hold office during good behavior, and receive a competent salary, and were entirely divorced from political affiliations, they would not be accessible to the prejudices which afflict ordinary juries.

C. Suydam Scott, Lexington, Ky. :

I would rather favor trial by judge.

E. P. Green, Akron, O. :

Yes. Instead of a jury, submit it to a judge and two assessors. Am now inclined not to have these two assessors permanent officials, but have the judge, after examining the issues and hearing the nature of the questions to be determined, to select two assessors that in his opinion are specially qualified to assist him in such case.

John D. Gilland Vicksburg, Miss. :

All actions *ex contractu* should be tried before a judge or a jury of three, selected from the best business men of the community.

T. A. E. Weadock, Bay City, Mich. :

I doubt it.

Pope Barrow, Athens, Ga. :

I know of no better plan.

C. C. Baldwin, Cleveland, O. :

I think it would be a difficult task to substitute as an ultimate right for the final decision of facts in most cases any other tribunal than a jury. Most voters would stick to the right to a jury.

R. W. Boyd, Darlington, S. C. :

The plan I favor is a commissioner (three would be better) connected with each trial court, whose duty it would be to take testimony during vacation in each case as it came to issue and report the same with his conclusions on the questions of fact to the trial judge, the judge to have the right in proper cases to re-examine any and all of the witnesses personally.

Matthew Hale, Albany, N. Y. :

I think that the existing system could be modified so as to be much more useful for deciding issues of fact. It seems to

me that the requirement of *unanimity* in civil cases is productive of evil and evil only. I would not abolish trial by jury. I think there is great propriety in submitting questions of fact in many cases to men of business, or men who are not lawyers; but the idea that in a civil action twelve men must agree before judgment can be rendered, is a relic of a barbarous age. In cases where great amounts are involved nothing is more common than for a party who desires delay, and who is anxious to "worry out" the other side, to try to get some one man on the jury who will refuse to agree. * * * I think that the adoption of a rule that a majority or two-thirds of a jury might render a verdict, would be beneficial. In such case the fact of the dissent of a part of the jury should be noted in the record; and perhaps verdicts not rendered by a unanimous jury might be set aside on easier terms or for a less cause than unanimous verdicts.

M. F. Morris, Washington, D. C. :

A lawyer who has a good case is always willing to submit it to the court *without a jury*; and a lawyer who has a bad case always wants a jury. This one fact speaks volumes. Second. In the system of equity jurisprudence, facts as well as law are submitted to the judge without the intervention of a jury; and any lawyer who has any experience at all in both systems knows that the determinations of equity are more satisfactory than those of common law. And the result has been that, instead of equity being a rare adjunct of the common law, twenty or twenty-five per cent of all the suits now brought are brought in equity; and it is industriously sought to enlarge the jurisdiction of equity for the purpose of *having justice done*. Is it not an absurdity on its face, that a tribunal competent to deal with a complicated question of fraud involving many facts and hundreds of thousands of dollars should not be competent to deal with a simple promissory note for a few hundred dollars?

QUESTION III.

N. C. Moak, Albany, N. Y. :

No. A jury coming from the masses judges average man from his standpoint; a judge from his, a much higher one.

Jas. O. Pierce, Memphis, Tenn. :

Sometimes it is; not always. *The facts* constitute a distinct element in every lawsuit. In some way, they are to be definitely ascertained. Lawsuits vary; the mode of ascertaining the facts may vary according to the various exigencies of different classes of cases.

U. M. Rose, Little Rock, Ark. :

With a court properly constituted, yes.

Simeon E. Baldwin, New Haven, Conn. :

Yes, if you have an honest, independent and clear-headed judge.

Manuel Eyre, San Francisco, Cal. :

I think it is, except in certain damage cases.

Herman A. Haeussler, St. Louis, Mo. :

No.

Jos. B. Cumming, Augusta, Ga. :

Not if the jury is selected from the intelligent.

Thos. H. Bacon, Hannibal, Mo. :

No.

J. Vaughan Darling, Wilkesbarre, Pa. :

No.

Andrew T. McClintock, Wilkesbarre, Pa. :

I would leave the law as in Pennsylvania; the parties litigant may elect to try, under our system, their case before the judge without a jury. I would not give any one party the right to make such election. Possibly power might properly be given to the court to refer complicated cases to a referee, with the right of exceptions to rulings on evidence and conclusions of law.

R. C. Benton, Minneapolis, Minn. :

The answer to this inquiry depends on the nature of the issues. Where they depend upon the accurate adjustment of numerous details, the decision of the judge is preferable. Where they are simple and depend on the credit to be given to conflicting witnesses, I prefer a jury. It is true that, as a rule, juries are more apt to be controlled by prejudice. This, however, is by no means a universal rule. In my own experience, I have found juries as impartial and perfectly free from

prejudice as any judge On the other hand, I have known judges of great learning and with perfectly upright intentions almost gangrened by unconscious prejudice.

R. K. Shaw, Marietta, O. :

Parties should have their election to try either by court or jury.

L. D. Brewster, Danbury, Conn. :

A thousand times.

Geo. A. Mercer, Savannah, Ga. :

I think that the facts in issue in civil cases can be more speedily and intelligently decided by a bench of from three to five judges, a majority of whom would control. If these judges held office during good behavior and received competent salaries, and were entirely divorced from political affiliations, they would not be accessible to the prejudices which afflict ordinary juries.

C. Suydam Scott, Lexington, Ky. :

I would rather favor trials by jury.

Pope Barrow, Athens, Ga. :

I prefer the jury system.

Henry Reed, Philadelphia, Pa. :

Unless desired by both parties, no.

C. C. Baldwin, Cleveland, O. :

Trial by three learned and experienced men would be more certain, reliable and satisfactory, and relieve law to a great extent of its reputation for uncertainty. I say three rather than one, because I think it is the feeling of most judges sitting with others that views are suggested and certainty attained much more nearly by three than by one, and the decision of the three invites greater respect.

Matthew Hale, Albany, N. Y. :

I do not think a trial by judge in all civil actions a more certain and preferable mode of ascertaining the facts than trial by jury, although in many cases *it is*. In other words, my answer to the question would depend on the nature of the action. Where an issue is complicated, or where a long account is involved, a trial by the court is much to be preferred. Upon plain, direct, simple issues depending upon the credulity of conflicting witnesses, I think a trial by jury, if the system were modified as above suggested, would be preferable to a trial by the court.

E. T. Merrick, New Orleans, La.

The very small number of jury trials in our state courts in New Orleans shows the appreciation of the bar of the trial by court. We have not felt any necessity for any particular aid to the courts in trying questions of fact. The judges soon acquire a habit of dealing with facts which makes their opinions as satisfactory as would be the opinion of a mere business man.

Gaylord B. Clark, Montgomery, Ala.

I do not think the trial by a single judge in civil actions a more certain or preferable mode of ascertaining facts than the jury trial.

J. L. Robards, Hannibal, Mo. :

Yes, because he hears all the evidence and is more competent to discover the real facts.

QUESTION IV.

H. B. Brown, Detroit, Mich. :

Yes. I have employed assessors for years in admiralty causes involving questions of negligence with very satisfactory results. They sit with me on the bench and listen to arguments and give me their opinions.

Austen G. Fox, New York. :

No.

Jas. O. Pierce, Memphis, Tenn. :

Yes, but let such be left to the discretion of the trial judge, subject to revision or appeal, as to whether assessors, referees or juries shall be employed ; such discretion as is allowed a chancellor to refer to a master or to send issues to a jury.

U. M. Rose, Little Rock, Ark. :

I should prefer three judges.

Augustus E. Willson, Louisville, Ky. :

No, I think not.

Simeon E. Baldwin, New Haven, Conn. :

No, except in matters turning on knowledge belonging only to experts ; then expert assessors would be useful, as in the English admiralty practice.

William L. Gross, Springfield, Ill. :

He may be so assisted—but the assessors should be the arms not the head of the body.

Manuel Eyre, San Francisco, Cal. :

Decidedly not; in case of long or complicated accounts a reference may be had to a commissioner.

E. T. Merrick, New Orleans, La. :

It would seem that in the country, assessors, drawn from different portions of the county, might be useful. The court of common pleas of Ohio, forty years ago, was organized with three citizens, who were not lawyers, but were commissioned as judges in their own counties and sat with the circuit judge, on questions arising out of proceedings in the probate court, sureties on bonds and fitness of persons for places of trust, as well as hundreds of other questions. It is easily seen their opinion would be of great value if they resided in different portions of the county. In the cities the assessors might be drawn, one from the medical profession, one from the commercial men, one from the mechanics, etc. etc. This might in a great measure relieve the court from the conflicting views of experts. * * * Whether this plan would or would not tend to an overestimate of the value of services rendered when suits were brought to recover for professional labor, the work of architects and artisans could only be ascertained by experiment.

Herman A. Haeussler, St. Louis, Mo. :

Yes.

Jos. B. Cumming, Augusta, Ga. :

No.

Thos. H. Bacon, Hannibal, Mo. :

No. The advantage in a jury is that it is too kaleidoscopic to be very corruptible.

Everett W. Pattison, St. Louis, Mo. :

There are certain classes of cases—actions against railroad and insurance companies and personal damage suits, furnish prominent examples—which could be better tried by a judge, assisted by expert “assessors,” than by an ordinary jury. The term “assessors” may be too limited to cover my idea. I would have these officials decide all questions of fact arising in cases such as I have mentioned, including the assessment of damages, and their conclusions as to the facts should be binding on the judge.

J. Vaughan Darling, Wilkesbarre, Pa. :

If the decision of facts be committed to a judge I am inclined to think that it would be well to supply him with the aid afforded by one or more officials to assist in the performance of that particular function.

Andrew T. McClintock, Wilkesbarre, Pa.

No. Standing assessors would increase expenses and would, I think, be a questionable expedient.

R. C. Benton, Minneapolis, Minn.

I have not found any advantage in associating assessors or assistants to aid the judge in deciding questions of fact. The first part of my professional experience was in a state where the judges of trial courts were aided by such permanent officers, termed assessors, while my recent practice has been in a state where judges sit alone. I can see no material difference in the result. The decisions are practically those of the judge.

R. K. Shaw, Marietta, O. :

I heard one of the side judges say once, when I first came to the bar, that the only question that the presiding judge ever asked of assistants was, "Is this bench hard?"

L. Prentiss, Cleveland, O. :

I do not think it would be desirable to have assessors to assist the judge.

L. D. Brewster, Danbury, Conn. :

The abbreviations describe them perfectly—Ass. Ass.

Geo. A. Mercer, Savannah, Ga. :

I think the judges should bear the entire responsibility of a trial and should not be able to cast any part of it upon assessors or other officers; but I think that they should be allowed the use of stenographers and accountants.

C. Suydam Scott, Lexington, Ky.

I rather think the permanent assessors suggested would work well, as masters and referees do in equity practice.

E. P. Green, Akron, O. :

I am now inclined not to have these two assessors permanent officials, but have the judge, after examining the issues and learning the nature of the questions to be determined, to select two assessors that in his opinion are specially qualified to assist him in such case.

Jno. D. Gilland, Vicksburg, Miss. :

The judge should be assisted by a jury of three selected for each week of the term or for each term.

T. A. E. Weadock, Bay City, Mich. :

Yes.

Pope Barrow, Athens, Ga. :

If facts are to be committed to the judge I should favor the system of assessors.

Henry Reed, Philadelphia, Pa. :

No.

Matthew Hale, Albany, N. Y. :

I see no object in having permanent officers called assessors to assist the judge. If the judge should require aid in matters of detail and computation I would give him the power (which he has under our present system in this state) to appoint a referee to take the account and ascertain the facts in the case.

M. F. Morris, Washington, D. C. :

The experience of our equity system shows that he would do better without them.

TRIAL BY JURY.

QUESTIONS V AND VI.

James O. Pierce, Memphis, Tenn. :

5. It does not prevail.

6. (a) It prevails. (b) No. (c) Yes. (d) Yes. (e) Yes. (f) I think it is not advisable. When a jury or other separate agency is the trier of the facts, that agency should be left independent—instructed generally how to weigh evidence, but left free from advice or interference as to the weight or value of this evidence. Subsequent revision corrects the jury's errors.

Matthew P. Deady, Portland, Ore. :

The judge should be at liberty to present the case to the jury on the evidence and advise them concerning their verdict of any matter or fact involved therein.

H. B. Brown, Detroit, Mich. :

Not in the state courts. I prefer and practice the English system.

Frank Goodwin, Boston, Mass.:

The English practice does not prevail in Massachusetts. Our system by positive enactment prohibits the judge, in charging, from giving his opinion upon the facts. The law is therefore given to the jury on hypothetical views of fact; but the instructions are not required to be in writing.

Manuel Eyre, San Francisco, Cal.:

It does not.

The charge must be in writing, or oral and taken down by a short-hand reporter. The jury is the sole judge of the weight of the evidence and the judge errs if he advise as to that. I prefer the English practice which obtains in our U. S. courts. Perhaps with our *elective* judiciary it would not be desirable to return to the English practice.

Augustus E. Willson, Louisville, Ky.:

No.

Austen G. Fox, New York:

The English system prevails in this state and it is not advisable to abolish it.

Egbert Whittaker, Saugerties, N. Y.:

The English practice, rather the New York practice, of charging the jury is the best, otherwise an eloquent, ingenious or stirring speech might win unjustly.

N. C. Moak, Albany, N. Y.:

The English practice prevails in this state and it is not advisable to change it.

Morris M. Cohn, Little Rock, Ark.:

In this state the jury is made judge of law and fact, the law being given in written instructions, usually prepared by counsel in the cause. The judge is not permitted to influence the jury regarding facts. We consider the English system far more scientific and satisfactory. It, in a much greater degree, prevents uncertainty in the administration of justice than our practice, as evidenced by comparison between our federal tribunals, where the English system is more extensively copied, and our state tribunals.

U. M. Rose, Little Rock, Ark.:

The English system is abolished in this state and ought to be. The judge charges orally but may be required to write his charge.

Simeon E. Baldwin, New Haven, Conn.:

The English system prevails; but while the judge can advise he seldom does. If required by either party the charge must be given in writing. I think advice from the court in many cases is indispensable to make the jury an instrument of justice.

William L. Gross, Springfield, Ill.:

The system of hypothetical instructions prevails and the inhibition upon the trial judge is as stated in the interrogatory. It is objectionable, because it is a time-consumer. The trial lawyers must have time to reduce their propositions to writing. This cannot be done till the evidence has gone to the jury. The court must take enough time to examine these always conflicting propositions and pass upon them, giving, refusing, modifying or substituting those of his own preparation in writing; and in practice the jury are not infrequently held after the argument has ceased, while the court is engaged in this law-writing and book-making. Second. Because from the character of the jurors they are less prepared to understand written instructions * * * than they are to receive and comprehend a clear oral statement from the court. Third. Because written instructions are a device to enable the defeated party to chop logic and split hairs and obtain reversals upon purely technical grounds. Fourth. Because it makes the judge a mere presiding officer in a contest in which he can take no part beyond determining as to the admissibility of evidence. It places a premium on ignorance, inexperience, secrecy, and irresponsibility, and shuts the mouth of the most intelligent, experienced, impartial and responsible trial participant.

E. T. Merrick, New Orleans, La.:

As to juries in the United States courts. Where the jury has the power of finally determining all questions of fact, as in the courts of the United States, on the law side of the court, justice could not be fully administered with any less power in the judges to comment on the testimony and to grant new trials than is now exercised by them. My experience leads me to think that the English system is a most valuable part of jury trial. And I may add that I know of no greater mental exertion than that required of a judge in a complicated case, to sum up before the jury.

Herman A. Haecussler, St. Louis, Mo :

I do not think it is advisable to abandon the system of delivering hypothetical instructions, etc.

Everett W. Pattison, St. Louis, Mo. :

In Missouri the English system does not prevail; here the judge, before the argument of counsel commences, submits his views of the law in written instructions, and is not allowed to comment on the evidence. * * * An experience of over twenty years convinces me that it is by far the best in vogue. I think it especially desirable that counsel should know the court's view of the law before addressing the jury. I do not deem it so important that the instructions should be communicated to the jury at that stage of the proceedings.

J. Vaughan Darling, Wilkesbarre, Pa. :

The English system prevails in this state. One difficulty which has prevailed in this state since the judiciary became elective is the unwillingness of the trial judge to impress his views of the weight and the value of the evidence upon the jury. As a rule, in this state, the average trial judge presents a colorless and indefinite abstract of the testimony, and considers himself fortunate if he can do this in a manner so absolutely negative as to escape reversal by the superior court. The system of delivering hypothetical instructions in writing does not prevail in Pennsylvania. The judge charges the jury orally (the charge having been reduced to writing by a stenographer and by special enactment made the subject of exception, upon which a writ of error may be based) sums up the evidence and comments thereon, and should advise them as to the weight and probative force thereof. It is universal, in cases involving any real contention as to the law applicable to it, for each side to frame what are called "points," or abstract statements of the law as applicable to a given state of facts, and which "points" the court is required to answer, affirming or denying them specifically.

Andrew T. McClintock, Wilkesbarre, Pa. :

Judges in Pennsylvania deliver oral charges, refer to the evidence, but do not as a rule advise as to its weight or value. I do not think the judge should be forbidden commenting on the evidence. He should bring it fairly to the notice of the jury without, however, expressing any opinion as to the weight

or probative effect thereof. The practice of delivering hypothetical instructions in writing does not prevail in Pennsylvania. The judge is not prohibited from charging the jury orally. * * * Our practice is, I think, generally satisfactory to the profession; and substantial justice is, as a rule, arrived at under our system.

R. C. Benton, Minneapolis, Minn. :

Judges deliver oral charges to the juries in this state. It can hardly be said that they sum up or give advice as to the weight or value of the evidence, although they are supposed to explain and point out the application of different items of evidence to the issues before them. The value of these instructions depends very much on the manner in which they are given. Some judges have the happy faculty of making theme selves understood by the jury, and have a favorable influence on the result. Others are not equally fortunate, and have very little influence. My experience has been that practically the charge of the judge does not have the influence it should have on the verdict. I do not think it advisable to abolish the system and substitute that of hypothetical instructions.

R. K. Shaw, Marietta, O. :

The English practice does not prevail. The jury are the sole judges of the fact, the evidence and its weight. The system of hypothetical instructions prevails, the court charging, if you find so and so are the facts, then you will proceed further, and if you then find thus and so, then this is the law, laying down the law, but scrupulously avoiding weighing or finding facts.

Gustave Koerner, Belleville, Ill. :

I am in favor of charging the jury generally, provided there are stenographic reports made, or the judge reduces his charge to writing.

Norman Paul, Woodstock, Vt. :

The English system does not prevail in this state. The judge charges as to the law; the weight to be given to the evidence is left to the jury.

L. Prentiss, Cleveland, O. :

I favor the English system, but would favor in connection with it the paying of sufficiently large salaries to secure the very best talent on the bench. A large amount of discretion

is necessarily vested in the judge in the course of a trial, and able and impartial *judges* will always be quite as important as good *laws*.

George A. Mercer, Savannah, Ga. :

A statute in this state compels the grant of a new trial if the judge expresses or intimates to the jury any opinion upon the evidence. I think that where the judges are elected or appointed for short terms—as in Georgia—they should not be allowed to impress upon the jury their view of the evidence as under the English system. The system of delivering to the jury hypothetical instructions *in writing* does not prevail in Georgia. The judge charges the jury orally, unless he prefers to reduce his charge to writing, or unless counsel before the trial request a written charge.

C. Suydam Scott, Lexington, Ky. :

The jury is instructed hypothetically, except in case of peremptory instructions or total failure of proof by party having the burden. The instructions in civil causes are written if required by either party. In criminal cases they must be written. The judge never sums up or otherwise comments, the jury being the sole judge of fact under the law as given to them by the court. This seems more logical than the English plan, which retains the form of a jury but emasculates it of all its decisive or even deliberative power.

John D. Gilland, Vicksburg, Miss. :

In this state the judge instructs the jury in writing before the argument, and is prohibited from charging orally, from summing up the evidence, or instructing on the weight thereof. This is preferable to the English system.

Pope Barrow, Athens, Ga. :

The English system of summing-up does not prevail in Georgia. I wish it did. I think it would aid juries. The judge is permitted to charge orally except when requested by counsel to put it in writing. I see no objection to this system.

C. C. Baldwin, Cleveland, O. :

The English system decidedly does not obtain in Ohio. There is considerable disinclination on the part of *nisi prius* judges to set aside a verdict. Some never do.

Henry S. Neal, Ironton, O. :

In Ohio the judges deliver their charges to the juries after the arguments of counsel. They can sum up the evidence if

they choose to do so. I regard it as highly improper for them to give any indication as to their opinions of the weight of the evidence. Juries are too apt to be unduly controlled by the opinion of the judge, if they can gather from the charge what it is.

Matthew Hale, Albany, N. Y. :

The English system does obtain in this state. I am not in favor of abolishing it. Assuming that the judge is a fair and intelligent man, I think his suggestions and advice are of great value to the jury. Of course, the defeated party always feels that he has been hardly dealt by where the charge of the court has been unfavorable ; but the object of trials is supposed to be to secure justice and not to gratify counsel or parties. I am convinced that more unjust verdicts are rendered under what might be termed neutral charges ; that is, where the judge states the contention on each side without summing up the evidence or indicating his opinion as to the force of it, than in other cases.

M. F. Morris, Washington, D. C. :

The English system of charging the jury, and also that of giving hypothetical instructions, prevails in the District of Columbia. I am decidedly of opinion that the judge should be allowed to charge the jury orally, and that he should be confined to the hypothetical instructions requested.

Gaylord B. Clark, Montgomery, Ala. :

The judge delivers an oral charge, but is not permitted to trespass on the functions of the jury in directing them as to the weight or value of any particular testimony. He may give them rules well established and recognized by which to weigh evidence, but further than this he cannot go. Written charges are also given by either party. The system of giving hypothetical instructions, in writing or orally, prevails in this state.

Jos. A. Wing, Montpelier, Vt. :

Our judges, with a few honorable exceptions, are in the habit of making the closing argument in jury trials, and of giving the jury to understand how the case should be decided, and in nine cases out of ten the jury find as the court intimates the case should be decided. This arguing of the case by the judge, as is the practice of some judges in Vermont, renders the trial by jury of little value. The presiding judge

charges the jury in regard to the law generally, without consulting the side judges, when, if tried by the court, side judges, as to the facts, are equal with the presiding judge. I have always claimed that the judge should charge the jury as to the law of the case in all its bearings on the case, and leave the evidence to the jury.

Augustus E. Willson, Louisville, Ky. :

Yes. No prohibition against oral instructions. They are sometimes given. Judge cannot sum up, etc. I am not wholly clear which way is best. With some judges, the old way ; generally, I think the new way best. So many judges have less sense than the average of jurymen.

QUESTION VII.

H. B. Brown, Detroit, Mich. :

The judge should have the last word.

Matthew P. Deady, Portland, Ore. :

I know nothing of such proceeding, but have heard that it obtains in Missouri. That is a jury trial wrong end foremost.

Jas O. Pierce, Memphis, Tenn. :

Yes, let the law be settled first by the court, then let the facts only be argued to the jury.

Austen G. Fox, New York. :

No.

N. C. Moak, Albany, New York. :

No.

Manuel Eyre, San Francisco, Cal. :

I believe such is the practice in Missouri, at least in criminal cases. We have never tried it.

U. M. Rose, Little Rock, Ark. :

Yes.

Augustus E. Willson, Louisville, Ky. :

I think the judge ought to instruct first as guide to all concerned, thus limiting arguments and laying out the lines of the case.

Wm. L. Gross, Springfield, Ill. :

No.

Herman A. Haeussler, St. Louis, Mo. :

Yes, but confine them to the law as laid down.

Jos. B. Cummings, Augusta, Ga. :

Yes.

Thos. H. Bacon, Hannibal, Mo. :

Yes.

Everett W. Pattison, St. Louis, Mo. :

I think it especially desirable that counsel should know the court's view of the law before addressing the jury. I do not deem it so important that the instructions should be communicated to the jury at that stage of the proceeding.

J. Vaughan Darling, Wilkesbarre, Pa. :

Decidedly not.

Andrew T. McClintock, Wilkesbarre, Pa. :

Counsel should not be allowed to address juries after the judge has delivered to them his charge. That has never been allowed in Pennsylvania.

R. C. Benton, Minneapolis, Minn. :

In my judgment the instructions of the court should follow the summing-up of counsel. We have in Minnesota a statute which seems to meet the necessities of the case very well. This statute requires the judge on request to indicate to counsel his rulings on principal points before summing-up. This permits counsel to make their summary in accordance with the rulings and at the same time enables the judge to give such detailed instructions as the whole development of the case requires.

Norman Paul, Woodstock, Vt. :

No.

L. Prentiss, Cleveland, O. :

I think the general law questions should be discussed and settled by the judge before the testimony is introduced; but that there should not be any argument to the jury after the testimony has been given and the case argued to the jury, and the jury afterwards charged.

L. D. Brewster, Danbury, Conn. :

No.

Edward C. Eliot, St. Louis, Mo.

No.

George A. Mercer, Savannah, Ga. :

I do not think that under any system counsel should be allowed to address the jury in argument after the judge has delivered to them his charge. The contrary practice might lead to unpleasant differences or altercations between judge and counsel; and the judge's final instructions upon the law of the case to the jury should not be obscured or weakened by after arguments.

C. Suydam Scott, Lexington, Ky. :

In our practice, counsel always speak after instructions; and it seems to me better as tending to keep them to the point, the judge, of course, preventing any improprieties on his attention being called to them.

T. A. E. Weadock, Bay City, Mich. :

No.

Pope Barrow, Athens, Ga. :

I think it is better for the judge to charge the jury after all argument by counsel is concluded.

Henry Reed, Philadelphia, Pa. :

No.

Henry S. Neal, Ironton, O. :

In Ohio the judges deliver their charges to the juries after argument by counsel. In the District of Columbia the juries are charged by the court after argument by counsel. This seems to work well there.

Matthew Hale, Albany, N. Y. :

Decidedly no. One object of the judge's charge is to obviate the effect of any unfair or sophistical arguments that may have been used by the plaintiff's counsel or the counsel who has the last speech to the jury. This object would be entirely defeated if counsel were allowed to make a speech to the jury after the judge's charge. The suggestion of allowing such supplementary argument seems to be based on the assumption that a trial is a sort of game in which the judge may be against one or the other contending counsel; and seems to overlook the impartial character of the judge and the fact that his duty is to rise above the feelings and contentions of parties and counsel, and to endeavor to impress upon the jury that it is their duty to do justice irrespective of any appeal to their prejudices or predilections for or against either party.

M. F. Morris, Washington, D. C. :

No.

Gaylord B. Clark, Montgomery, Ala. :

My opinion is that the judge should charge the jury if possible before the argument of counsel. In this way the jury have the law of the case before them, and both they and counsel are able to adapt the facts to the law of the particular case with more precision. This I believe would result in a saving of time and the shortening of argument, as counsel would not have to argue aspects of the case which might be useless in view of the charge to the jury.

QUESTION VIII.

H. B. Brown, Detroit, Mich. :

Yes.

James O. Pierce, Memphis, Tenn. :

Yes. It is a most excellent practice. In a great majority of contested civil causes *the facts* ought to be *separately* ascertained. In a small proportion, general verdicts are preferable. Let the trial judge have discretion as to this matter.

Frank Goodwin, Boston, Mass. :

Yes; and it obtains in Massachusetts, in the discretion of the presiding judge.

Austen G. Fox, New York :

Yes. It tends to save new trials for exceptions to the charge.

Augustus E. Willson, Louisville, Ky. :

Yes; very useful thing.

N. C. Moak, Albany, N. Y. :

In the discretion of the court :

U. M. Rose, Little Rock, Ark. :

Yes.

William L. Gross, Springfield, Ill. :

Yes; it is the common practice in the trial of chancery cases.

H. A. Haeussler, St. Louis, Mo. :

Yes.

Joseph B. Cumming, Augusta, Ga. :

Yes. This practice is in vogue in Georgia and works well.

Thomas H. Bacon, Hannibal, Mo. :

Yes, under careful limitations.

Andrew T. McClintock, Wilkesbarre, Pa. :

With us juries may in certain cases find a special verdict. A class of cases may require an answer to special questions, but in all other cases such practice does not exist and is not desired.

R. C. Benton, Minneapolis, Minn. :

I have found the practice of special findings very useful. Such findings leave the case in better shape for review, and tend to correct any erratic tendencies of the jury.

R. K. Shaw, Marietta, O. :

It is in our practice, rarely.

Norman Paul, Woodstock, Vt. :

Yes.

L. Prentiss, Cleveland, O. :

Yes.

L. D. Brewster, Danbury, Conn. :

Yes.

George A. Mercer, Savannah, Ga. :

This practice can be usefully adopted. It now prevails in the trial of equity cases in Georgia. Counsel on both sides submit questions to the court, and the court then adopts, modifies or adds to them, and presents the issues of fact to the jury, who reply to each question separately. The judge then bases his decree upon their answers.

C. Suydam Scott, Lexington, Ky. :

"Special verdicts" have recently been abolished in Kentucky, an act having been rushed through, probably without the knowledge of one lawyer in one hundred. It seems a blunder, they being especially useful in suits against corporations and in other cases where prejudice is apt to come in; and on the whole, if we must have juries, these special verdicts are the only kind that seem right to me in both civil and criminal practice, the jury finding facts and the court applying the law. The above repealing act saves to the court the power, in its discretion, to direct a curious affair called a special general verdict, which the code defines as "the finding upon any of the issues in favor of the plaintiff, or of the

defendant," and which I believe few, if any, lawyers understand the practical use or meaning of, supposing it to have any.

E. P. Green, Akron, O. :

Yes. It is adopted in this state, and answers by jury to special questions, often very properly prevent a judgment being rendered upon their general verdict.

T. A. E. Weadock, Bay City, Mich. :

Yes.

Pope Barrow, Athens, Ga. :

We have adopted the practice in Georgia, in equity cases, of requiring the jury to answer special questions. It is increasing in favor, and, in my judgment, is undoubtedly conducive to correct and intelligent findings of facts.

Henry Reed, Philadelphia, Pa. :

This practice may be extended with advantage.

C. C. Baldwin, Cleveland, O. :

I think the practice may well be extended.

Matthew Hale, Albany, N. Y. :

The practice of requiring the jury to answer special questions prevails to some extent in this state, and, I think, is useful in many cases. Care ought to be taken that the questions be clear and simple; and I do not think it advisable to submit a great number of questions to a jury at the same time.

M. F. Morris, Washington, D. C. :

No.

Gaylord B. Clark, Montgomery, Ala. :

The practice of requiring a jury to answer special questions does not prevail in this state, but my own judgment is that it would tend very much to insure justice in certain classes of cases, if the jury are called upon to settle a disputed fact without knowing the bearing which their conclusion will have in the case. In this connection, I think that the jury should be withdrawn pending the argument of all jury questions, whether on the pleadings or as to the admission of evidence, and that counsel should not be permitted to state in the hearing of the jury what they propose to prove by their testimony, but pending such discussions the jury should withdraw.

Jos. A. Wing, Montpelier, Vt. :

The courts in this state frequently require the finding of special facts by the jury, which is, I think, the proper course in many cases.

QUESTION IX.

H. B. Brown, Detroit, Mich. :

The law is right as it stands.

Austen G. Fox, New York :

Unlimited.

Jas. O. Pierce, Memphis, Tenn. :

Full discretion, subject to revision and correction on appeal.

N. C. Moak, Albany, N. Y. :

In proper cases.

U. M. Rose, Little Rock, Ark. :

To a very much greater extent than is practised.

William L. Gross, Springfield, Ill. ;

Until, in his judgment, justice has been done. If the jury, as now, is to consist of twelve men, and they are to unite in a verdict, no verdict should be permitted to stand till the concurrence of the thirteenth man (the presiding judge) is obtained. This power in the trial judge to set aside verdicts is all that saves the system of written instructions (with its accompanying denial of comment by the trial judge as to the weight of evidence, etc., during the trial) from amounting to a practical denial of justice.

Herman A. Haeussler, St. Louis, Mo. :

Two.

Jos. B. Cumming, Augusta, Ga. :

The judge of the trial court should have a sound discretion to set aside verdicts, etc.

Thomas H. Bacon, Hannibal, Mo. :

No. Preserve the *de novo* jurisdiction as now existing.

Everett W. Pattison, St. Louis, Mo. :

In Missouri, *nisi prius* judges can grant only one new trial, on the ground that the verdict is against the weight of the evidence. I cannot but think that it would be wise to recede from this position. A second jury may do as great injustice as the first.

J. Vaughan Darling, Wilkesbarre, Pa. :

I think this power should be unlimited.

Andrew T. McClintock, Wilkesbarre, Pa. :

The power to set aside verdicts should be given to the courts. Applications for new trials are not unfrequent with

us, but are rarely granted unless from good cause shown. In a somewhat active practice of nearly fifty years I cannot recall any flagrant abuse of the power of giving new trials on the part of the judges with whose proceedings I have been acquainted.

R. C. Benton, Minneapolis, Minn. :

I would favor giving the trial judge authority to order a new trial whenever in his judgment the verdict is clearly against the weight of evidence, either in respect of the general decision or the award of damages. * * * In case it should happen, as I have seen, that the number of concurrent verdicts indicates that the dispute is one in which the opinions of jurymen differ from those of judges, and a new trial would only result in another similar verdict, then the verdict should stand, for I deem it safer in doubtful matters to rely upon the consensus of the fairly intelligent many, rather than the supposed wisdom of the few.

R. K. Shaw, Marietta, O. :

To the fullest extent in the furtherance of justice.

Gustave Koerner, Belleville, Ill. :

As our present jury system is working, judges ought to have a right to set aside a verdict whenever the jury decide against the manifest preponderance of the testimony, or find extravagant damages, and allow as many new trials as justice requires. Much would depend upon the character of the jury. Where it is evidently intelligent and respectable, courts ought to be slow in setting aside verdicts, but as it is often composed of the very dregs of society, courts ought not to hesitate if they are satisfied that injustice has been done to grant new trials.

Norman Paul, Woodstock, Vt. :

The power to set aside verdicts should rest in the discretion of the court.

L. Prentiss, Cleveland, O :

In all cases where the verdict is clearly against the weight of the evidence.

L. D. Brewster, Danbury, Conn. :

None.

George A. Mercer, Savannah, Ga. :

I think it must necessarily be left to the sound judicial discretion of the judge to determine whether or not the verdict

should be set aside in respect to the weight of the evidence, the amount of damages and the number of verdicts rendered. I think the judge should have the right to grant at least one new trial without appeal.

C. Suydam Scott, Lexington, Ky. :

Only where it has clearly arisen from improper motives or violation of instructions. We should have a *real* jury, if *any*.

T. A. E. Weadock, Bay City, Mich. :

He should not have that power.

Pope Barrow, Athens, Ga. :

I think the judge ought to be allowed to set aside any verdict that is found in his court.

Henry Reed, Philadelphia, Pa. :

To the extent prevailing under the English system, liberally construed.

C. C. Baldwin, Cleveland, O. :

Unless verdicts may be set aside as against evidence, the tribunal with power is inexperienced and unlearned.

Henry S. Neal, Ironton, O. :

Trial judges should have the power to set aside the verdicts of juries which are the result of prejudice, manifestly contrary to the weight of the evidence or where excessive damages are given. There must be a wholesome check exercised upon everybody likely to be influenced by popular excitement, clamor and kindred vices.

Matthew Hale, Albany, N. Y. :

My own opinion is that the power now vested in judges, to set aside verdicts, is not too great. The power of a single judge in this respect is subject to review by the general term. In case of any gross abuse of such power, the order of special term is likely to be reversed. I do not think that this power is often abused.

M. F. Morris, Washington, D. C. :

I would not be disposed to put any limitation whatever on the power of a trial court or of an appellate tribunal to grant a new trial; but I would do away with the necessity for it by abolishing the system of trial by jury.

Gaylord B. Clark, Montgomery, Ala. :

The judge of a trial court should have full discretion and power to set aside verdicts in respect of the weight of evidence

and the amount of damages, but there should be some limit on this power, as there is in this state, on the number of times the judge can set aside a verdict at the instance of the same party.

QUESTION X.

Frank Goodwin, Boston, Mass. :

They should not possess any of these powers, except (although, perhaps, this answer may not be contemplated in the question), that if the appellate court can say that the verdict, if rendered on the evidence, ought to be set aside as often as rendered, the court should have the power to order judgment against the party to procure the verdict.

Jas. O. Pierce, Memphis, Tenn. :

Full appellate jurisdiction, *i. e.*, for purposes of revision and correction.

Austen G. Fox, New York :

The court of last resort should not be required to examine those questions.

N. C. Moak, Albany, N. Y. :

It may be reviewed by our supreme court, but not by the court of appeals.

U. M. Rose, Little Rock, Ark. :

Only in case of obvious error.

William L. Gross, Springfield, Ill. :

To the fullest extent.

H. A. Haeussler, St. Louis, Mo. :

Every time they feel a wrong has been committed.

Jos. B. Cumming, Augusta, Ga. :

The appellate court should have sound discretion to set aside verdicts, etc.

Thos. H. Bacon, Hannibal, Mo. :

No.

Everett W. Pattison, St. Louis, Mo. :

Our supreme court has long since established the doctrine that an appellate court cannot review the judgment on the ground that the verdict is against the weight of the evidence, if there is any evidence to support the verdict. I can but think that it would be wise to recede from this position. A

second jury may do as great injustice as the first. The appellate court ought not to allow a verdict which is manifestly wrong to stand, merely because there is some slight evidence on which it might be based, when the preponderance of evidence would warrant or require a different verdict.

J. Vaughan Darling, Wilkesbarre, Pa. :

I think this power should be unlimited ; but not upon writs of error, upon which merely the rulings of the court below upon specific points are reviewable.

Andrew T. McClintock, Wilkesbarre, Pa. :

I would not extend the power of giving new trials to appellate courts ; the judge who tries the case is the proper officer to exercise that discretion.

R. C. Benton, Minneapolis, Minn. :

I would not limit the functions of an appellate court in reviewing the action of a trial court in granting or refusing new trials. An appellate court will always recognize and make allowances for the fact that the trial judge, who sees the witnesses and their manner of testifying, has better means of knowing the truth than they themselves can have on examinations of the record. After making that allowance, there should be no restriction of their powers. I do not believe it expedient to attempt to secure by legislative restriction that wisdom which ought to be inherent in any appellate court.

R. K. Shaw, Marietta, O. ;

Appellate courts should possess every power necessary to render justice in every case.

Gustave Koerner, Belleville, Ill. :

Appellate courts should have the same power as trial courts, but, of course, only in cases where the verdict rendered is so manifestly unjust as to lead to the presumption of gross ignorance or corruption.

L. Prentiss, Cleveland, O. :

Appellate courts should have the same powers as trial courts, so far as facts are to be retried—but I do not favor re-trials of the facts in appellate courts.

L. D. Brewster, Danbury, Conn. :

Entirely.

Geo. A. Mercer, Savannah, Ga. :

I think the appellate courts should possess the same discretion as the trial court. Unquestionably, such power prolongs litigation, but if a limit be fixed, gross injustice might be done by the jury or lower court without the means of correction. In such case, I think time is of less importance than fairness.

C. Suydam Scott, Lexington, Ky. :

I see little use in their having any. The court in which the jury sits seems to be better fitted to receive and, if necessary, revise its work.

T. A. E. Weadock, Bay City, Mich. :

Only to correct palpable errors.

Pope Barrow, Athens, Ga. :

I think appellate courts should always possess the same power as trial courts to set aside verdicts, etc.

Henry Reed, Philadelphia, Pa. :

Not at all, except where a new inquiry is ordered. The appellate court needs to save delay.

Henry S. Neal, Ironton, O. :

This power, if conferred upon appellate courts, should be carefully guarded and circumspectly exercised.

Matthew Hale, Albany, N. Y. :

In this state the only appellate courts which can exercise the power in question is the general term of the supreme court, in cases triable in that court. The theory of our courts is that there is but one supreme court, and that its discretion may be exercised by the general term as well as by the special term. The court of appeals will not interfere with this discretion. In this respect I think the system which prevails in this state is right.

Gaylord B. Clark, Montgomery, Ala. :

I think that appellate courts should have the power to revise the finding of facts of the lower court ; in other words, to review a motion for a new trial where the verdict is rendered contrary to the weight of the evidence, if such motion be refused, but only in cases *ex delicto*, where personal, neighborhood or public prejudice may cause injustice, but they should only exercise it in favor of reversal when it is clear and manifest that substantial injustice has been done.

Joseph A. Wing, Montpelier, Vt. :

The appellate court in this state is not called upon to find any facts in any case at law, or but few cases in equity; by our laws, if either party in a suit in equity asks for it, a master is appointed to find the facts; but in very important cases the parties sometimes prefer to have the case tried under the old rule, in which case the appellate court settles the facts.

RELIEF OF APPELLATE COURTS.

Rufus King, Cincinnati, O. :

Relief of appellate courts always raises the vexed question of intermediate tribunals of that class where the facts shall be finally reviewed, so that cases of every description * * * shall go to the supreme court purely and simply upon the law. * * * A supreme court burdened with the duty of re-examining the issues of fact must break down if conscientious in its work. * * * The most practical way of relieving these courts is by making them like the House of Lords, so costly of access that suitors will count the risk before going further. Cheap and easy appeals, so far from furthering justice, are in reality an immense mischief, both public and private. Nothing can be more salutary than imposing heavy costs upon them, payable in advance. But limiting appeals by the mere amount in controversy is justly obnoxious as an arbitrary discrimination between the rich and the poor. The other method admits all.

M. F. Force, Cincinnati, O. :

The number of judges of the appellate court should in no case exceed seven.

It is not desirable that the appellate court should be authorized to sit in sections.

A temporary supreme court commission, having the powers of the supreme court and being a co-ordinate court, equally final and conclusive, is serviceable when the accumulation of cases in the supreme court is otherwise hopeless.

A power to create inferior courts is not a power to create a court with the powers of the supreme court.

A supreme court commission, such as above described, has been twice tried in Ohio, and both times reduced the docket to a comparatively manageable size.

I do recommend intermediate appellate courts. The plan has been tried in Ohio and has worked beneficially.

Fixing a pecuniary limit to the right of appeal is an extreme measure which is necessary in the national courts, where there is but one court of last resort for the nation, but can hardly be justified in states where there is a satisfactory intermediate appellate court.

Questions of fact should be finally settled in the intermediate appellate court. An exception to this should be cases in equity. These cases consist so largely in the proper exercise of discretion in a particular state of facts, that few cases could reach the ultimate court if the facts were finally determined by any inferior tribunal.

Austen G. Fox, New York :

A money limit.

N. C. Moak, Albany, N. Y. :

A greater judicial force.

U. M. Rose, Little Rock, Ark. :

Intermediate appellate courts should be established.

William L. Gross, Springfield, Ill. :

Divide the territory and increase the number of courts.

Herman A. Haeussler, St. Louis, Mo. :

By commission.

Jas. O. Pierce, Memphis, Tenn. :

No general rule can be stated; the remedy must fit the particular difficulty.

Thos. H. Bacon, Hannibal, Mo. :

More appellate courts, of course.

Everett W. Pattison, St. Louis, Mo. :

A system of intermediate appellate courts, such as we now have in Missouri, furnishes the best solution of the problem.

J. Vaughan Darling, Wilkesbarre, Pa. :

Too much time is occupied in the trial of small cases; with a sufficiently trained judiciary, the opinions in the great majority of cases should be oral and delivered immediately upon the close of the arguments. The cheapness of litigation is a great incentive to it. Costs should be increased, and all costs of printing made costs of the cause.

Manuel Eyre, San Francisco, Cal. :

In California, we have tried a supreme court with two departments, three justices each, and a chief-justice. Many cases are heard in banc. Some attorneys think it is not a success. Now we have also a commission of three appointed by our Supreme Justices' Act of Legislature. They hear cases and write opinions which are (or always have been) approved by "the court." They even hear cases submitted in banc. In fact, their decisions have given universal satisfaction, and it would be a God-send if we had four of such commissions—three commissioners each—*instead of* our supreme court. They illustrate the immeasurable superiority of *appointive* judiciary.

Andrew T. McClintock, Wilkesbarre, Pa. :

Our supreme court relieved their docket in Philadelphia by restricting the arguments of counsel. A short list allowed fifteen minutes to each side, the balance of the list restricted the arguments on both sides to an hour, except in special cases, in which the chief-justice, at his discretion, extended the time on examination of the paper book. Such extensions are rare. The time given did not always, in the opinion of counsel, enable them to enlighten the court, and enable them to arrive at a correct decision, but the same strict enforcement of the rules cleared the docket and disposed of the remanets. In the other districts the lists are cleared with fair dispatch.

R. K. Shaw, Marietta, O. :

Codify the law, then put penalties upon appellate judgments. Make it too costly to carry-up suits for delay. An attorney's fees taxed, or a penalty double the amount of a state's interest rate, will make a party borrow at usual rates, rather than carry a case up for delay. Penalties for the carrying up of not-doubtful cases. Appeals are too cheap.

Geo. A. Mercer, Savannah, Ga. :

The best method of relieving those appellate courts which are "behind with their dockets," is for the court to work harder and catch up. If this is beyond the power and ability of the court * * * a larger number of judges should be appointed.

C. Suydam Scott, Lexington, Ky. :

A general raising of the limit of appealable amount, accompanied with permanent intermediate courts of appeal, and

greater power in both courts to punish the appealing of what are clearly mere "delay cases."

T. A. E. Weadock, Bay City, Mich. :

Let the judges be better paid, work harder and avail themselves of modern inventions and conveniences.

Pope Barrow, Athens, Ga. :

Increase the number of judges.

Henry Reed, Philadelphia, Pa. :

Courts of intermediate appeal.

R. W. Boyd, Darlington, S. C. :

1st. Require the submission of printed arguments without oral argument or the appearance before the court of the attorneys, except when deemed important and requested by the court.
2d. Require appellate courts to render judgment without reasons therefor, except in a strictly limited class of cases of real value and interest to the profession and the public. The reading of a printed argument before an intelligent court is an absurd waste of time, and evil rather than good results from requiring the court to justify its judgment in the majority of the cases that come before it.

Henry S. Neal, Ironton, O. :

The best method of relieving courts of appeal is to elevate to the bench abler, more learned, more experienced and more industrious lawyers. Judges now are to a great extent the creatures of party conventions. They are selected, not with reference to their fitness for the place, but by reason of their ability to manipulate political conventions. The men most suitable decline to sacrifice their self-respect by seeking the influence of the individuals who are usually most active in such assemblies. Ignorance, therefore, as often as otherwise, characterizes even appellate judges, and, from want of proper qualifications, greater labor is entailed, more hesitation in arriving at conclusions, consequently often great delay.

Matthew Hale, Albany, N. Y. :

Increase the number of judges and let the court sit continuously.

Augustus E. Willson, Louisville, Ky. :

With us, electing industrious, able-bodied judges would, with the help of the superior court, an assistant court having control of smaller appeals, be all we need.

M. F. Morris, Washington, D. C. :

Business could be prevented from accumulating by greater earnestness on the part of appellate judges and by more work on their part. Appellate judges should have no *nisi prius* or circuit duties, and there is no reason why they should not work ten or at least nine months in the year, instead of five or six. There does not seem to be any good constitutional reason why an appellate tribunal should not sit in sections.

Gaylord B. Clark, Mobile, Ala. :

The best method of relieving appellate courts which are behind in their dockets, in my opinion, is to appoint temporary judges, not to act with the court, but to constitute a separate appellate court, *pro hac vice*, to whom shall be assigned a portion of the accumulated business of the court.

H. B. Brown, Detroit, Mich. :

Not beyond five.

Frank Goodwin, Boston, Mass. :

No number can be selected arbitrarily, as the facile working together of the various minds of judges in deliberation depends upon the nature of the minds and upon the attainments of the judges, as well as upon many extrinsic circumstances. But a limit for the average must exist, and it is suggested that any excess over nine judges impairs the working capacity of the court beyond the ratio of benefit received; and that whether an increase over seven judges would not be an evil without equivalent benefit may depend upon the duties to be performed not in an appellate capacity.

Manuel Eyre, San Francisco, Cal. :

I think that three departments (nine justices) would work as well as our two. It is utterly impossible with us for one court to decide the appeals taken; the present court with two departments and a commission is two years behindhand now.

Austen G. Fox, New York :

Not over seven or nine.

George W. Biddle, Philadelphia, Pa. :

I think it is a mistake to increase the number of judges of an appellate court greatly. By enlarging the number you divide the responsibility without greatly increasing the working capacity of the court. I believe a court of five judges is better than one of seven, and much better than one of nine.

U. M. Rose, Little Rock, Ark. :

Not beyond nine.

William L. Gross, Springfield, Ill. :

No more than five men should be expected to work together, and three will produce better results.

Herman A. Haeussler, St. Louis, Mo. :

Five.

Thos. H. Bacon, Hannibal, Mo. :

Not beyond three.

Everett W. Pattison, St. Louis, Mo. :

I believe three men on the appellate bench are as efficient as any greater number if all of them join, as they should, in the decision of each case.

Andrew T. McClintock, Wilkesbarre, Pa. :

From five to seven judges are, I think, quite sufficient for the working capacity of an appellate court.

Pope Barrow, Athens, Ga. :

I think the number can safely be raised to nine judges on one bench.

Matthew Hale, Albany, N. Y. :

May be as high as twelve or thirteen, but five to constitute a quorum.

M. F. Morris, Washington, D. C. :

The best appellate court consists of five members. This is large enough to give the result of experienced judgment, and small enough to be manageable.

Gaylord B. Clark, Mobile, Ala. :

An increase of the number of judges does not amount to an increase of the working capacity of the court as a whole. It is desirable that every opinion rendered should be recorded as the *considered* opinion of the entire court. An increase of the number of judges, where every judge gives attention to the entire business of the court, would decrease very little the percentage of labor for each judge of the same amount of business. I do not think that any state court should be composed of more than five judges.

Rufus King, Cincinnati, O. :

The number of judges for an appellate court, it seems, cannot exceed nine, if they are to counsel over their work as one,

but five is the golden standard. * * * The Supreme Court of Ohio, by a recent amendment of the constitution, will consist of five judges until the legislature shall authorize an increase of the number.

H. B. Brown, Detroit, Mich. :

No.

Augustus E. Willson, Louisville, Ky. :

No.

Frank Goodwin, Boston Mass. :

It is not desirable.

Jas. O. Pierce, Memphis, Tenn. :

Never ; there should be but one supreme court.

Austen G. Fox, New York. :

No, unless for civil and criminal causes.

Geo. W. Biddle, Philadelphia, Pa. :

I think it undesirable that an appellate court should sit in two or more sections. I believe it to be the right of a suitor to have his case heard by the whole appellate court, and I believe such hearing to be greatly advantageous to the members of the court.

N. C. Moak, Albany, N. Y. :

Yes. Chief-justice to write no opinions, but to see that no conflict arises.

William. L. Gross, Springfield, Ill. ;

No.

J. Vaughan Darling, Wilkesbarre, Pa. :

I do not think it desirable in any case.

Andrew T. McClintock, Wilkesbarre, Pa. :

I cannot see any good reason why an appellate court should not be authorized to sit in two or more sections.

R. K. Shaw, Marietta, O. :

Our supreme court has five judges. Could be constituted of eight, and sit in two sections of three, to whom all parties should apply for leave to file a petition in error, and this should be fully argued. If two of the three do not say there is probable error, no petition ought to be filed. This petition in error and omission section should pass upon all cases. The section of five judges should hear and determine all cases

allowed to be filed by the former section. In this way the first section prevents fully half of the cases that would ever get filed. Such a system is preferable to a supreme court commission.

Geo. A. Mercer, Savannah, Ga. :

Courts of last resort should be able to hear and determine causes in sections. * * * Each section could submit its own causes to other sections convened as a general court, and the ultimate opinion would be that of the entire court. Important cases might be argued fully before the general court.

C. C. Baldwin, Cleveland, O. :

A supreme court divided must not unfrequently differ. Suppose two divisions of five and two decisions by majorities of one. One supreme court makes one final tribunal to decide principles.

M. F. Morris, Washington, D. C. :

There does not seem to be any good constitutional reason why an appellate court should not sit in sections. More than that is confessedly done now, when particular cases are practically handed over to particular judges, and the other judges acquiesce without discussion or examination. The system of sitting in sections is a simple, inexpensive and elastic one, which may be adopted or abandoned, according to the necessities of business.

E. T. Merrick, New Orleans, La. :

By way of illustrating my views of a probable escape from the evil, I would refer to the supreme court of the United States, with its nine judges, as a convenient model. Suppose we increase the number of judges to fifteen or more, we soon have too much time taken up in the necessary and earnest discussion of the questions which are to be decided by so many judges. But why cannot fifteen judges be divided, say, into three sections, sitting sometimes in *banc* and sometimes in separate chambers? * * * Let the sections separately hear the causes allotted to them, and let them provisionally decide all cases of their division in the same manner where there is no dissent. Let these provisional opinions and decrees be printed and placed in the hands of all the other judges for examination before they become final by being entered on the minutes of the court, at stated periods, by the

full bench. Allow the judges of the other sections to require a reconsideration of the case, under such restrictions as may be deemed advisable, and before two sections of the full bench, if needed, where great principles demand such consideration. By this mode the frivolous litigation would soon be sifted out, and many of the larger cases also might be very satisfactorily disposed of, and the decree would be the decree of the whole bench. In equity, a case is referred to a master in chancery to report. The decree finally entered is that of the chancellor, whether the report of the master is modified or confirmed.

Rufus King, Cincinnati, O.:

The relief of the supreme court by a temporary concurring commission is provided for by the constitution of Ohio, but after two experiments, has not proved a success. On both occasions the dockets of the supreme court were not materially relieved, and there were deviations and solecisms in some of the decisions which have clouded the law unpleasantly to the bar and perhaps to the court. The decisions of a commission have always the infirmity also of being open to slight, as not being "the court."

Jas. O. Pierce, Memphis, Tenn.:

Not at all.

No; if there be such power, it is in the supreme court itself.

Yes; not very satisfactory.

Austen G. Fox, New York:

Bad. Conflicting decisions.

Geo. W. Biddle, Philadelphia, Pa.:

I look upon a supreme court commission as a blunder, and I do not think that the establishment of such a commission would be constitutional in the state of Pennsylvania, where I live.

Manuel Eyre, San Francisco, Cal.:

We have a commission who hear appeals and give their written opinions. The supreme court adds: "For the reason given in the foregoing opinion, judgment is affirmed or reversed, etc." Our experience is that this commission's decisions, appointed as it has been, invariably rank with those of the court itself.

Our legislature has done so upon the recommendation of our Bar Association.

It has, and has given perfect satisfaction. Our supreme court has been subjected to much criticism; the commission to none that I am aware of.

Morris M. Cohn, Little Rock, Ark.:

I think it should be discarded.

U. M. Rose, Little Rock, Ark.:

Hardly at all.

Thos. H. Bacon, Hannibal, Mo.:

A commission is a subterfuge—administer the government with more courts. Experiment has been tried in this state and did not unsettle the law.

Andrew T. McClintock, Wilkesbarre, Pa.:

I think where the dockets of a court of last resort are behind, a supreme court commission would be useful in relieving the appellate court of their arrears of business. In the case stated, the legislature has no power to create a commission which shall perform a portion of the functions of the supreme court.

C. Suydam Scott, Lexington, Ky.:

It seems to me that the court should decide, upon hearing and investigation, for itself all points of law.

C. C. Baldwin, Cleveland, O.:

A supreme court divided must not unfrequently differ. Suppose two divisions of five judges and two decisions by a majority of one. One supreme court makes one final tribunal to decide principles. The experiment has been tried in this state and has not unsettled the law, because it is understood that the supreme court is, by virtue of longer life, the stronger body.

Henry S. Neal, Ironton, O.:

As regards a commission as a mode of relief, I cannot speak with much favor. All that can be said is that it helps to clear up the docket. We have tried it in Ohio, and it has not found favor with the profession generally.

Matthew Hale, Albany, N. Y.:

I am not a believer in commissions. We have had a commission in this state composed of excellent judges; but it was *ex necessitate* an independent appellate court. Its decisions were of course final in the cases decided by it; but they have not been followed as authoritative by the court of appeals.

It is at best a makeshift, and I do not think that the profession in this state desire to see the experiment repeated. Under our constitution, the legislature has no power to create a commission to perform a portion of the functions of the court of appeals. Our former commission was under an express constitutional provision.

M. F. Morris, Washington, D. C. :

The experiment of a commission has never been found necessary in the District of Columbia, and it may be said that, as far as the District is concerned, it never can be needed, inasmuch as the Supreme Court of the United States is its final appellate tribunal. We have a court authorized to hold special and general term substantially on the New York system; and therefore we have in a limited way the system of intermediate appellate tribunals. Opinions differ very much as to whether it has given satisfaction or not.

R. K. Shaw, Marietta, O. :

A supreme court commission has been found necessary twice in Ohio to relieve a crowded docket. They were successful in this, and decided a great number of cases * * * They usually followed Ohio's settled laws.

Augustus E. Willson, Louisville, Ky. :

Yes; I think so. "Inferior" is a word of comparison, and no doubt it is correct to call a court having jurisdiction of smaller appeals an inferior court.

Our superior court is like a commission; it is the court of appeals on minor appeals. It has worked well.

Geo. W. Biddle, Philadelphia, Pa. :

I am in favor of an intermediate appellate court, under certain restrictions, and I think that when a citizen's case has been twice decided, that is, by an original and an intermediate appellate court, he should not be permitted to take it to the highest court unless the amount involved exceeds a certain sum, or a majority of the judges of the intermediate court certify that it is desirable that it should be reheard.

James O. Pierce, Memphis, Tenn. :

(a) Yes, in some cases (see answer to 1). (b) No.

Morris M. Cohn, Little Rock, Ark. :

I favor intermediate appellate courts, but only among the federal judiciary and in large and populous states where business is extensive. It has not yet been needed or tried in this state.

Manuel Eyre, San Francisco, Cal.:

5. Certainly not. Every litigant desires his case carried to the highest court; intermediate appellate courts are unsatisfactory. It has not been tried in California. I think our commission the better plan.

U. M. Rose, Little Rock, Ark.:

Yes. It has not been tried.

William L. Gross, Springfield, Ill.:

The system of intermediate appellate courts has been tried during the past nine years, and has worked well in Illinois.

E. T. Merrick, New Orleans, La.:

We have inferior appellate courts in civil cases, in Illinois, whose jurisdiction is limited to \$2000. *The one in New Orleans works admirably.* For the country, the system is expensive for the amount of work performed. The five judges of the supreme court only get salaries of \$5000 each—\$25,000. The ten appellate country judges get \$4000 each; total, \$40,000; which, with reference to the heavy state debt is relatively burdensome. One of the advantages of these appellate courts is they sit in the same town where inferior courts sit, and use the original record, rendering the cost of a transcript of appeal unnecessary.

Thos. H. Bacon, Hannibal, Mo.:

No. Not intermediate. Plan tried in Missouri Constitution of 1865. Failure.

Everett W. Pattison, St. Louis, Mo.:

I would have the cases appealable to the highest appellate court so limited that the number of cases brought to it should be within the capacity of three men to dispose of, working with ordinary diligence ten months of the year. I would have a sufficient number of intermediate courts to dispose of all the remaining appealed cases.

J. Vaughan Darling, Wilkesbarre, Pa.:

I do not recommend intermediate appellate courts. For many years the court of last resort in this state sat at *visi prius*. The advantage of this in familiarizing the members of that court with the practical interests, business and otherwise, of the community was very great; but it increased rather than decreased the work of the appellate court.

Andrew T. McClintock, Wilkesbarre, Pa. :

I do not recommend the plan of creating intermediate appellate courts as a means of relieving appellate courts of last resort. The plan has never been tried in this state.

R. K. Shaw, Marietta, O. :

Most assuredly. We have just begun with an appellate circuit court which prevents many common pleas errors reaching the supreme court.

Gustave Koerner, Belleville, Ill. :

We have in Illinois an intermediate appellate court, and it has relieved the supreme court a good deal.

L. Prentiss, Cleveland, O. :

I favor intermediate courts as courts of error rather than of appeal, and the highest court to be made a court of error mainly.

Geo. A. Mercer, Savannah, Ga. :

The great majority of causes which are appealed are carried up for one of two reasons: either because the appellant really believes his side of the case is right and should prevail, or for delay. Neither of these parties would rest satisfied with the decision of an intermediate court, but would go on to the court of last resort.

C. Suydam Scott, Lexington, Ky. :

I do. We have a superior court created some four years ago, now extended for another term, and working, so far as I know or have any reason to believe, pretty satisfactorily, its decisions, not, however, going into the Kentucky reports, though published in full or abstract by a monthly journal known as the *Kentucky Law Reporter*.

C. C. Baldwin, Cleveland, O. :

By a change in the Constitution of Ohio intermediate appellate courts have been established called circuit courts. The courts have been at work something more than a year and the result seems to be very satisfactory. The decisions of this court are final on questions of fact, but there is no limit in amount for petition in error to the supreme court on errors of law.

Henry S. Neal, Ironton, O. :

- Intermediate appellate courts have not found favor in Ohio for the sufficient reason that they have been composed of the

judges who held the trial courts and have therefore been directly interested in sustaining their own opinions as announced in the court below. We have remedied this evil (in Ohio) by the establishment of an independent intermediate court from which we hope better things.

Matthew Hale, Albany, N. Y. :

We have in this state an intermediate appellate court, namely a general term of the supreme court, and of the superior court and court of common pleas of the city of New York and of some other local courts. To some extent I think this plan has worked well ; but I think it should be modified and the jurisdiction of the intermediate appellate court limited. I would preserve the general term as a tribunal for the review of questions of fact and of discretion ; but I think it would be better in all cases where the trial below is by the court or by a referee, and facts are found by the trial tribunal, if the appeal were directly to the court of appeals. In such cases, where a sufficient amount is involved, parties never rest satisfied without a decision from the court of last resort. Argument and decision of general term are in my opinion of no use. They simply create delay and obstruction.

M. F. Morris, Washington, D. C. :

The very worst method of relieving tribunals of last resort. It necessarily multiplies the expense, annoyance and vexation of appeals. It is not satisfactory, for everyone wishes to get the tribunal of last resort ; nor is it pleasant to find, after a number of decisions by an intermediate tribunal, that, when a case large enough gets to a tribunal of last resort, the intermediate tribunal has been wrong all the time. Appellate tribunals should definitely settle principles ; intermediate tribunals never settle anything but particular cases.

Gaylord B. Clark, Mobile, Ala. :

Theoretically intermediate appellate courts are an unsatisfactory way of settling the law in a case where both parties are so conscious of right as to demand a review of the proceedings of the *nisi prius* courts, but I know of no other plan which is practicable, after every other device has been resorted to, to lighten the labors of the supreme court, such as printing records, briefs and requiring abstracts to be made by counsel. Intermediate appellate courts have never been tried in this state.

Augustus E. Willson, Louisville, Ky. :

Yes. I favor intermediate courts. Our superior court is revised in certain cases by the court of appeals.

Rufus King, Cincinnati, O. :

Limiting appeals by mere amount in controversy is justly obnoxious as an arbitrary discrimination between rich and poor. The other method admits all. It may drain the poor suitor, but if his case is good he will gain his costs. In this aspect the English system of costs is not an unmixed evil.

James O. Pierce, Memphis, Tenn. :

(a) Unlimited.

(b) No.

Austen G. Fox, New York :

Limited.

Manuel Eyre, San Francisco, Cal. :

8. I believe there should be a limit. Ours is three hundred dollars.

George W. Biddle, Philadelphia, Pa. :

I believe the plan of fixing a pecuniary limit under certain restrictions is just and useful.

N. C. Moak, Albany, N. Y. :

In our state it is fixed at five hundred dollars. I doubt the propriety of limiting by amount.

Morris M. Cohn, Little Rock, Ark. :

It should undoubtedly be limited. To me it seems, speaking of state courts, that all cases originating before justices of the peace should be appealable to a competent court of record for trial anew, and no further, except where constitutional questions are involved, which should be allowed to go to the court of last resort. All other causes should not be appealable. As it usually transpires that most causes are improperly appealed, as much injustice is actually done by allowing as in refusing appeals. The course suggested is a crude way, but is, perhaps, as good as any, of doing justice to all parties, and maintaining peace and respect for the law.

H. B. Brown, Detroit, Mich. :

Yes.

U. M. Rose, Little Rock, Ark. :

No.

William L. Gross, Springfield, Ill.:

The state should not provide two measures of justice—one for the opulent and another for the poor. A way should be provided whereby every litigant may have the questions arising in his case passed upon by the court of last resort in his state.

H. A. Haeussler, St. Louis, Mo.:

No.

Thomas H. Bacon, Hannibal, Mo.:

The right of appeal in state courts should be unlimited. The right to one appeal is as sacred as the right to one trial.

J. Vaughan Darling, Wilkesbarre, Pa.:

The right of appeal in civil cases should be unlimited.

Andrew T. McClintock, Wilkesbarre, Pa.:

I think it would be humane to limit the right of appeal in civil cases to an amount which would be about equal to the cost of taking a case to the court of last resort. It would be useful to have such a limit. Whether just, would be answered in the negative by that not unusual class of clients which every lawyer encounters in his practice, who have "millions to spend for defense but not one cent for tribute." I would protect the purses of such litigants and restrain their passions.

R. K. Shaw, Marietta, O.:

The right to apply for leave to file appeal or petition in error should be unlimited. No limit as to the amount, but error should not be allowed to be filed unless there is a judicial sanction for it upon hearing.

Gustave Koerner, Belleville, Ill.:

The right of appeal should be limited. It is in Illinois. No case can get beyond the appellate court to the supreme court unless the amount involved is more than one thousand dollars, or unless the appellate judges certify that the case is of importance enough to go to the supreme court.

L. Prentiss, Cleveland, O.:

I would not limit the amount as to the intermediate court, but would as to the highest, but am not prepared to express an opinion as to the amount. * * * There should be no limit as to the amount where the constitutionality of a statute is involved.

George A. Mercer, Savannah, Ga. :

I think it would be just and useful to relieve the appellate court by fixing a pecuniary limit to the right of appeal. Such a rule might cause individual hardship, but by expediting causes would benefit the public.

C. Suydam Scott, Lexington, Ky. :

I favor a pecuniary limit, and if necessary an increase thereof. Enough big cases arise to settle the law, generally speaking; and, at any rate, some inconvenience must be suffered, if necessary, by individuals for the good of all in the way of disposing of business.

C. C. Baldwin, Cleveland, O. :

If there is an intermediate appellate court I think there should be a limitation in amount. A small limit would greatly relieve a supreme court, and the public would be satisfied by the opportunity of being heard on petition in error.

Henry S. Neal, Ironton, O. :

The right of appeal should not be limited. The courts of the country should be open to the poor as to the rich, to the weak and humble as to the powerful. Justice should be denied to none, or in any way withheld.

Matthew Hale, Albany, N. Y. :

I am not a believer in the system of limiting the appeals by reference to the amount in controversy, provided the amount is substantial and not nominal. An amount which seems trifling to a merchant in a large city is very important to a farmer in the rural districts. The law questions involved in suits respecting small amounts are often as important as in larger cases. I should regret to see an enlargement of the limit fixed in this state, in cases of appeal to the court of appeals.

M. F. Morris, Washington, D. C. :

The limitation of the right of appeal by reference to a pecuniary standard, is radically vicious and wrong, the result of which is to create one court for the rich and one for the poor; and, according to the present tendency in this regard, it excludes all persons other than the great corporations from the court of last resort. A pecuniary limitation should never be adopted, except so far as required by absolute necessity. Principles are in no way dependent on the amounts involved; and appellate tribunals are mainly intended for the settlement of great principles.

Gaylord B. Clark, Mobile, Ala. :

I disfavor the limitation of the right of appeal because of the amount in controversy, but there should be a small limit, say fifty dollars or one hundred dollars, to prevent trivial cases from encumbering the dockets of the supreme court. I think an increase of the penalties in case of affirmance by the supreme court, unless the case presents some novel question or unusual feature, or is a case of first impression in the state in the particular aspect presented.

Augustus E. Willson, Louisville, Ky. :

Unlimited. Limiting amount makes some wrongs small in amount, but great in principle, irremediable. Pecuniary limit, unjust, unreasonable, illogical.

Austen G. Fox, New York :

Facts should be conclusively settled in the court of first instance.

James O. Pierce, Memphis, Tenn. :

(a) It should, by all means, subject to revision in appellate court, as at present, *i. e.*, as to whether evidence sustains finding. (b) No ; only to some extent, as just stated.

Geo. W. Biddle, Philadelphia, Pa. :

I think, in what are called common law proceedings, that is, where the issues are plain and simple, the facts should be settled in the court of first instance. In appeals in equity, admiralty and divorce, I think the appellate court should, if necessary, examine and determine the facts, meaning by facts the proper results of the evidence—*de novo*.

Manuel Eyre, San Francisco, Cal. :

Our law does. Cases have been reversed by our supreme court on the ground that the decision was contrary to the evidence, but never when the evidence was conflicting. I think it would be a decided retrograde movement. Examine and determine the facts *de novo* and certainly it must create great additional work and delay.

N. C. Moak, Albany, N. Y. :

Our supreme court in banc settles facts except when it grants new trials ; then courts of appeal review them.

Morris M. Cohn, Little Rock, Ark. :

In cases which are taken to courts of last resort, the appellate court should be asked to pass upon complicated questions of

fact and all propositions of fact inextricably interwoven with questions of law. Beyond that no case at law, in equity or admiralty, should be reconsidered in the appellate court, except upon mooted questions of law.

Wm. L. Gross, Springfield, Ill. :

The Illinois system has been found to work well. The appellate (intermediate) court should review the facts, and when it agrees with the trial court, only questions of law should go to the court of last instance.

Thos. H. Bacon, Hannibal, Mo. :

No. Preserve the *de novo* jurisdiction as now existing.

J. Vaughan Darling, Wilkesbarre, Pa. :

I do not think the law should provide for conclusive settlement of *facts* in the court of first instance. The unwillingness of every court to review findings of facts by the lower court is a sufficient safeguard itself. In equity cases in this state the finding of the master is reviewable by the court of common pleas, and the action of that court by the supreme court, and unless apparent error is found in the findings of facts, the conclusions of the master are practically final; in divorce cases, should there be no real contest, the cause finds its way to the jury. In admiralty cases the present system has, I believe, given entire satisfaction.

Andrew T. McClintock, Wilkesbarre, Pa. :

The law should, in my opinion, provide in every remedial system for the conclusive settlement of the facts in the court of first instance. With us the appellate court is not required to examine and determine facts *de novo*. The evidence goes in the paper book form, and is used only in reference to the question of law arising under the facts.

R. K. Shaw, Marietta, O. :

There is no appeal in divorce cases in Ohio. The facts should be found in the first instance, with the right in the appellate court to set the finding aside and order a new trial when the trial court should have set the finding aside and did not.

L. Prentiss, Cleveland, O. :

I favor the settling of the facts in the court of the first instance, but give parties the right to special findings so far as necessary to raise all the law questions.

Geo. A. Mercer, Mobile, Ala. :

It is my opinion that the facts should be conclusively settled prior to the appeal in all cases.

C. Suydam Scott, Lexington, Ky. :

I think facts should be settled in the lower courts, the appellate tribunals having enough to do in settling and applying the law, and the lower courts being also better triers of fact by reason of propinquity to the scene of the matters investigated.

C. C. Baldwin, Cleveland, O. :

This question has been much discussed by the bench in Ohio, with inclination to think that the judge at *nisi prius* is quite as able to determine facts in equity as a jury in a suit at law, and that the one should be received in the same manner as the other.

Matthew Hale, Albany, N. Y. :

Where a double appeal exists, as in this state, the facts should be conclusively settled, either in the trial court or in the first appellate court, and the attention of the court of last resort should be confined to questions of law.

M. F. Morris, Washington, D. C. :

My suggestion as to the best system of judicature is : a court of first instance composed of three to five judges with power to pass upon the facts conclusively, so far as they may be segregated from the law ; and an appellate tribunal of five or seven judges to review merely questions of law. This is the system in substance that now obtains in suits instituted against the United States (court of claims), and I think it has given very general satisfaction.

Augustus E. Willson, Louisville, Ky. :

In jury trials, yes ; in all others, no—no, indeed.

DELAYS OF CRIMINAL JUSTICE.

Jno. Doniphan, St. Joseph, Mo. ;

Delays of criminal justice exist in Missouri, as elsewhere, and arise : first, from inefficient laws, which permit technical defenses, unreliable modes of selecting juries, and the custom of permitting causes to be continued until the witnesses are scattered ; second, the inefficiency of the courts and prosecuting officers ; where defendants are either wealthy or

influential, prosecutions are often handicapped by personal considerations; third, the political genius of our institutions obtrude upon almost every criminal case, and, as the masses have the ballot, they insist upon the right to vote at once upon the guilt or innocence of the party charged, and thus create a public opinion adverse to the fair administration of justice; the officers of the law must obey it or resist it at their peril. These evils can in part be remedied by enlarging the statute of jeofails, by removing the court from the influences of an elective judiciary, increasing the term so that the judge can become educated to the bench; by creating the office of county attorney for each circuit, filling it for at least a ten years' term by good instead of poor lawyers, pay no fees but a salary, at least as large as the judge, and permit the occupant to engage in no other practice in his circuit; then, at the end of each term of the court, make it the especial duty of the judge, circuit attorney and circuit clerk to select jurors to serve at the next term.

H. A. Haessler, St. Louis, Mo.:

The delays and uncertainties which exist in criminal justice are due to the rascally practices in criminal courts and the incompetency of judges.

Thos. H. Bacon, Hannibal, Mo.:

Criminal statutes edited and supervised by a self-constituted college of criminal lawyers, a clique in the general assembly.

Andrew T. McClintock, Wilkesbarre, Pa.:

There is not much ground for complaint of delays and uncertainties in the administration of criminal justice in Pennsylvania.

Gustave Koerner, Belleville, Ill.:

Such delays and uncertainties exist in Illinois to an alarming extent. One of the reasons is that we have no separate criminal courts. The civil and criminal cases run constantly into one another. No amendments, even of the most trivial character, are allowed in indictments. They should be allowed; and no amendment unless it changes entirely the offense, or requires a different defense, should work a continuance. In our state, a writ of error has never been allowed to the state attorney. Consequence: that some of the judges, anxious not to be reversed, decide every point in favor of defense as a general thing, except only where a contrary decision would be glaringly wrong and create suspicion of corruption.

George A. Mercer, Savannah, Ga.:

No unusual delays or uncertainty exist in this state in the administration of criminal justice. * * * Any delays which occur in the trial of criminal cases are attributable rather to want of knowledge or force in the judge or public prosecutor, than to defects in the constitution of the courts.

C. Suydam Scott, Lexington, Ky.:

Such delays do exist. The prime cause I believe to be too easy continuances, hung juries, technical reversals of convictions and too free use of the pardoning power. Defendants should be brought to prompt trial unless it be *clear* that injustice will be done thereby. Appellate courts should be more closely held to reversals, and only for defects affecting substantial justice; and I believe it would be well to have a board of pardons with less power than governors now use and frequently abuse.

John D. Gilland, Vicksburg, Miss:

Criminal justice is slow and uncertain in our state, due to the lax execution of the laws by officers, and to the selection of the ignorant class on the juries. A large number of criminal trials are farces for want of respectable juries.

T. A. E. Weadock, Bay City, Mich:

Frequent terms.

Matthew Hale, Albany, N. Y.:

A great deal of uncertainty and delay arises from the practice which allows an appeal to the general term, and then appeal by either party from the decision of that court to the court of appeals. The ends of justice would be greatly promoted * * * by abolishing the intermediate appeal, and requiring all appeals in criminal cases to be taken directly to the court of appeals, giving such cases (as they now have) a preference on the calendar of that court.

Gaylord B. Clark, Mobile, Ala.:

In the city of Mobile there is some little delay due to crowded dockets, and sometimes a little uncertainty, owing to the large number of exemptions given to firemen and others from jury duty.

Augustus E. Willson, Louisville, Ky.:

Yes. Jurors will not do their duty. Courts forget the crime in ingenious studies of legal hair splitting.

H. B. Brown, Detroit, Mich. :

I think two or three in twenty years.

Rufus King, Cincinnati, O. :

Though no case of lynching has yet been accomplished in Ohio, a desperate attempt in March, 1884, was defeated, but the court house at Cincinnati, with most of the records and papers, were destroyed by fire in the conflict.

George W. Biddle, Philadelphia, Pa. :

I am not aware that any lynchings have taken place in the last five years. If so, they have not fallen under my notice.

N. C. Moak, Albany, New York :

No.

John Doniphan, St. Joseph, Mo. :

I believe about ten per cent. of the executions for crime in Missouri during the past ten years have been by lynch law. This opinion is formed merely from memory and without consulting statistics.

Augustus E. Willson, Louisville, Ky. :

Yes.

Herman A. Haeussler, St. Louis, Mo. :

I am sorry to say I know of none.

Thomas H. Bacon, Hannibal, Mo. :

None in my county that I know of. Only one man judicially hanged in this county.

R. K. Shaw, Marietta, O. :

I believe but one lynching in Ohio in a great many years. Ratio very small.

Geo. A. Mercer, Savannah, Ga. :

I have no personal knowledge of lynchings in this state within the last five years.

C. Suydam Scott, Lexington, Ky. :

I believe I recall but one lynching in Kentucky within the last five years, and I am not sure of the date of that. Quite a number of legal hangings in that period. In short, the more regular, though less efficient, tribunals are getting and keeping pretty well ahead.

John D. Gilland, Vicksburg, Miss. :

There have been several lynchings in our state within the last five years. I do not know the ratio.

T. A. E. Weadock, Bay City, Mich. :

One lynching in Michigan within five years. No capital punishment here.

Pope Barrow, Athens, Ga. :

I do not know of any lynchings in Georgia. There may have been such occurrences, but I do not now recall them.

Matthew Hale, Albany, N. Y. :

I am unaware of any lynchings in this state, and am unable to answer this interrogatory.

Matthew P. Deady, Portland, Ore. :

Jurors should be selected from the assessment roll, and none should be qualified to serve as a juror who has not within the year paid a tax on property assessed at not less than \$500. With a jury list made from the voters at large, the men of business excused and their places filled by the sheriff from the idlers and loafers he has on his list, the criminal and vicious classes and their sympathizers constitute an active and determined element of the jury, who may be relied on to prevent convictions in criminal cases when possible. Add to this the fact that the state is usually represented by a much weaker and poorer paid counsel, and it is not surprising that so many prosecutions result in verdicts of not guilty, contrary to the common impression of the case and often of the fact.

Geo. W. Biddle, Philadelphia, Pa. :

Our juries are impartially selected and, as a general rule, fairly charged and instructed.

Jno. Doniphan, St. Joseph, Mo. :

The character of juries can be improved by placing their selection in the hands of responsible officers.

Thos. H. Bacon, Hannibal, Mo. :

Juror's intelligence, disqualification. Should be removed. General instructions should be enacted and furnished in printed slips, as on reasonable doubt, false swearing, credit, etc.

Andrew T. McClintock, Wilkesbarre, Pa. :

Our mode of selecting juries in criminal cases and of charging juries in such trials is satisfactory and about as good as can be devised.

Geo. A. Mercer, Savannah, Ga. :

I think that in the selection of jurors the law should provide that under no circumstances, in a criminal case, shall a juror be drawn from the bystanders. This practice enables a friend or an enemy to place himself where he may be drawn upon the jury, and there exert improper influence or cause a mistrial.

C. Suydam Scott, Lexington, Ky. :

The defendant has an undue proportion of peremptory challenges—twenty to the commonwealth's five. There is fault in letting the jury fix the punishment between often widely separated limits. I prefer the old system of letting the jury ascertain the facts, by written questions if you will and if practicable, and then and there have the law applied and penalties fixed by the court.

Jno. D. Gilland, Vicksburg, Miss. :

Juries should be selected by a commission appointed by some high and competent authority above suspicion.

Pope Barrow, Athens, Ga. :

Our system of selecting and charging juries in criminal cases is reasonably satisfactory.

Gaylord B. Clark, Mobile, Ala. :

I do not think the mode of selecting juries can be substantially bettered. The vice lies in the large number of exemptions from jury duty.

George W. Biddle, Philadelphia, Pa. :

I think our form of criminal procedure a good one.

N. C. Moak, Albany, N. Y. :

Yes.

U. M. Rose, Little Rock, Ark. :

Yes.

Joseph B. Cumming, Augusta, Ga. :

Yes.

Thomas H. Bacon, Hannibal, Mo. :

Yes.

Andrew T. McClintock, Wilkesbarre, Pa. :

Our statutes of jeofails are fairly sufficient to obviate escapes from justice on technical grounds. Where such statutes do not exist, they should be so enlarged as to obviate escapes from

justice on technical grounds, which do not concern the real question of guilt or innocence.

Gustave Koerner, Belleville, Ill. :

No amendments, even of the most trifling character, are allowed in indictments. They should be allowed; and no amendment, unless it changes entirely the offense, or requires a different defense, should work a continuance. In our state a writ of error has never been allowed to a state's attorney. Consequence: that some of the judges, anxious not to be reversed, decide every point in favor of defense, as a general thing, except only where a contrary decision would be glaringly wrong and create suspicion of corruption.

Norman Paul, Woodstock, Vt. :

I think amendments to the form of indictments and other criminal processes should be allowed at any time before verdict, but not as to matters of substance.

George A. Mercer, Savannah, Ga. :

I do not think the statute of jeofails can safely be extended to criminal cases. It would certainly be unjust to the prisoner to allow amendments in matters of substance. In Georgia all exceptions which go merely to the form of an indictment must be taken before the trial, and are considered waived if not so taken. Where the exception is purely formal, and its immediate correction cannot possibly take the prisoner by surprise or otherwise harm him, I think justice would be promoted by instant amendment and trial.

C. Suydam Scott, Lexington, Ky. :

It seems to me that in the interest of public justice amendments by the prosecution should be liberally permitted.

John D. Gilland, Vicksburg, Miss. :

Our statute of amendments in criminal cases is probably broad enough.

T. A. E. Weadock, Bay City, Mich. :

We have done so.

Pope Barrow, Athens, Ga. :

The law as it now stands is working well in this city.

Matthew Hale, Albany, N. Y. :

I am inclined to think that the statute of jeofails has already been sufficiently enlarged in this state.

Gaylord B. Clark, Mobile, Ala.:

The statutes of jeofails in this state are reasonably sufficient for the purpose indicated.

Matthew P. Deady, Portland, Ore.:

The defendant in a criminal action should be allowed to testify in his own behalf; but the prosecution should not only be at liberty to cross-examine but to call him in chief. He should be at liberty to decline to answer, but his refusal to do so, or his omission to testify in his own behalf, should, like any other act or omission of the party, be the subject of legitimate comment by court and counsel.

Frank Goodwin, Boston, Mass.:

I am opposed to the changes indicated.

Geo. W. Biddle, Philadelphia, Pa.:

I am of opinion that no one should be obliged to accuse himself or herself. I do not think an inquisitorial examination of one accused of crime is calculated to advance the cause of justice. * * * I believe it to be difficult, if not impossible, to prevent the jury drawing an inference unfavorable to the supposed criminality where he omits or refuses to testify, but I prefer the law as it stands.

N. C. Moak, Albany, N. Y.:

No. The law is one of mercy rather than vindictiveness.

U. M. Rose, Little Rock, Ark.:

The maxim should be continued.

Jno. Doniphan, St. Joseph, Mo.:

I can see no reason why a criminal should not be examined by either party, and a refusal to go on the stand might properly be stated to the jury as an *indicia* of guilt; for did not the learned Persian judge say, "He knoweth better than another one."

Thos. H. Bacon, Hannibal, Mo.:

Abrogate the maxim—the reason for it long since ceased.

Andrew T. McClintock, Wilkesbarre, Pa.:

In my opinion no man should be obliged to accuse himself, * * * nor should the refusal of the witness to answer any relevant question be considered by the jury as a circumstance affecting the question of guilt, unless the prisoner puts himself on the witness stand and refuses to answer any relevant

question on his cross-examination. In such case such refusal should be allowed to be considered by the jury. I would not make the failure of the accused to testify in his own behalf the ground of comment in the argument of the prosecuting attorney against the prisoner.

R. K. Shaw, Marietta, O.:

The state ought not to have the power to put the accused on the stand to accuse himself. The privilege of testifying in his own behalf is of little value except to a man of good character and reputed to be truthful, and in the latter case it does not avail in a clear case proved by witnesses.

Gustave Koerner, Belleville, Ill.:

Criminal defendants ought to be allowed to state their cases, but not under oath; and if they do not do it, the prosecution may comment upon it. The reverse is the case in Illinois, but the juries usually draw their inference just the same as if the prosecution were allowed to draw their attention to the prisoner's silence.

Geo. A. Mercer, Savannah, Ga.:

I do not as yet feel prepared to sanction the French system of interrogating the accused. I think that where the right to testify in his own behalf is accorded to the prisoner the law should allow the public prosecutor to comment before the jury upon his failure to avail himself of this privilege.

C. Suydam Scott, Lexington, Ky.:

The just rule seems to me to be the one generally in use, whereby the accused person can testify if he wishes but is not compelled to do so.

T. A. E. Weadock, Bay City, Mich.:

No.

Pope Barrow, Athens, Ga.:

I think this would be a dangerous step. He might as well say "I am guilty," as to stand mute. If he should swear falsely, it would be a shame, which would be chargeable to the law. I do not think the prosecuting attorney ought to be allowed to imagine the reason which prompts the accused to decline to testify and to make his imagination the basis of an argument. He cannot know the reasons and they may arise from worthy motives.

Matthew Hale, Albany, N. Y.:

I think there is every reason for the continuance of the maxim of the common law referred to. My opinion is that the law should not allow the prosecuting attorney to make the failure of the accused to take the stand a subject of comment.

* * * Unless we are prepared to say that the accused person shall be compelled to take the witness stand, it seems to me that legally no inference ought to be made against him because he does not avail himself of the privilege which the law gives him of being the witness in his own behalf.

Gaylord B. Clark, Mobile, Ala.:

I do not think a man ought to be convicted for standing mute. Other reasons than personal guilt may be the cause. The failure of the accused to testify should not be the subject of discussion by the state's attorney. I say this as one whose experience has been more that of a prosecutor than a defender of criminals.

Joseph A. Wing, Montpelier, Vt.:

I should oppose a law to compel defendants to testify, but if they do not testify the state should have the right to argue that fact to the jury as a strong circumstance against them, and if they do testify the state should have the right to cross-examine them the same as any other witnesses, on all issues in the case.

Augustus E. Willson, Louisville, Ky.:

I think he should be subject to full and compulsory examination, and his bearing under it be weighed by evidence.

LEGAL EDUCATION.

James O. Pierce, Memphis, Tenn.

Very largely.

T. A. E. Weadock, Bay City, Mich.:

To a large extent.

C. Suydam Scott, Lexington, Ky.:

I do not think ignorance of the law is the cause of much of this delay. On the other hand, it seems that, as the law stands, delay is generally fought for by at least one side of a suit, and that delay is more likely to be obtained by a lawyer well up in details and small points.

Austen G. Fox, New York :

To a very great extent.

Manuel Eyre, San Francisco, Cal. :

To a fearful extent.

George W. Biddle, Philadelphia, Pa. :

I have no suggestions to make touching the better education of the members of the bar. I believe they are generally well educated and qualified in this state.

N. C. Moak, Albany, N. Y. :

I know of no law which can give lawyers brains or young men experience.

Moses M. Granger, Zanesville, O. :

All instruction in law schools or offices should enforce the study of legal rules and principles—first, in the law of reason and logic, and only secondarily by the aid of reported cases. After more than thirty years' practice (a fair proportion of them occupied in judicial labors), I can say (as can most judges) that the vast majority of cases cited and examined had little or nothing to do with the vital or contested point in the case. As these cases are very rarely cited to establish any legal principle; as the vast majority are produced to favor this or that *application* of an uncontested rule or principle, no codification can aid us in doing away with this enormous waste of time by bench and bar.

Jno. Doniphan, St. Joseph, Mo. :

The want of legal knowledge and training are, to some extent, causes of the uncertainty in judicial proceedings, but the inefficiency in the judiciary, unworthy members of the bar, the prejudice of class and the demoralization of an elective judiciary, all unite to bring contempt upon the best efforts to uphold respect for the bar. The first and most important reform is a higher moral standard for the bar as a class. Make it harder to get into the profession and easier to get out the unworthy members.

Herman A. Haeussler, St. Louis, Mo. :

Not at all.

Jos. B. Cumming, Augusta, Ga. :

At least two-thirds.

Thos. H. Bacon, Hannibal, Mo. :

Disastrously.

J. Vaughan Darling, Wilkesbarre, Pa. :

A large proportion of the bar consists of men who are wholly unfitted by education or ability for the practice of a learned profession, and probably not more than a third of the entire profession secure a competency by legitimate exercise of their office of attorney. The standard required for admission to the bar should be raised. At present, in this state, it is simply an ordinary acquaintance with the branches of good English education, whatever that may mean.

Andrew T. McClintock, Wilkesbarre, Pa. :

I would suggest an increase of time of study, and an enlarged scope of subjects to be mastered before admission to the bar.

Gustave Koerner, Belleville, Ill. :

No one should be admitted to the bar unless he has had at least an *academic* education and has attended a law school at least two years.

• Norman Paul, Woodstock, Vt. :

Undoubtedly, the poor management of suits occasioned by persons uneducated in the law has done more to swell the dockets of the courts by delays in the trial of suits than any other cause, and it should be the aim of the profession to elevate the standard of admission to the bar, which should be made as near uniform in all the states as possible.

L. D. Brewster, Danbury, Conn. :

Greatly.

Geo. A. Mercer, Savannah, Ga. :

Where the judges are chosen by popular suffrage or appointed for political services rendered, as is much too often the case, the uneducated or untrained lawyer is often put upon the bench, and procrastination and delay are the natural results. Similar defects in the practising lawyer lead to inadequate preparation of cases, frequent surprises, and to that bane of judicial administration, constant continuances; and appeals become necessary to correct original shortcomings. A fixed period of preliminary study and preparation—in no case less than one year—should be prescribed. The examination should be more rigid than it is. * * * The license to plead and practice should be conditioned upon future aptitude and professional integrity, and it should be within the power of the court to suspend the same for cause shown and to require a new examination.

Pope Barrow, Athens, Ga.:

I think ignorance is largely the cause, not only of delays and uncertainties in the administration of justice, but is the fruitful source of frivolous, useless and vexatious litigation. No man ought to receive a license from the state to prosecute legal business in our courts who cannot pass a creditable examination, not only in the law, but in the English language and mathematics. * * * This it would not be easy to do, and would require long and arduous study on the part of the applicant.

Henry Budd, Philadelphia, Pa.:

The want of proper training, not only on the part of the bar but of the bench, is greatly responsible for the delay of judicial administration. If both bench and bar were thoroughly trained, the labored arguments now made to prove to the satisfaction of the court well-established principles would not be necessary, nor would we have the spectacle, so often seen, of argument made in the teeth of the law. Long arguments are rare in England, where the system of bar education is superior to ours. I would lengthen the course of study and extend it over a much wider field than it now covers. Especially would I have it embrace the study of other systems of jurisprudence besides our own.

Gaylord B. Clark, Mobile, Ala.:

It is very largely responsible. There are a great many able men, brilliant men, at the bar who are neither learned nor accurate lawyers. I would suggest better teachers, longer courses of study and a more thorough examination before admission to the bar.

Morris M. Cohn, Little Rock, Ark.:

All students should receive in a law school a thorough preliminary training in the national and local history of this country, not only from a purely narrative standpoint, but also from a comparative economical and philosophic standpoint. * * * The great extent of this country territorially, its probable future expansion, the past and future of its constitutions, all make the need of discipline suggested apparent. * * * Experience certainly tells me that want of knowledge of commercial needs on the part of lawyers and judges has played a great part, and is continuing to play a great part, in giving currency to great confusion and injustice in many

branches of commercial law, of which assignments for creditors, fraud upon creditors and insurance may be specially mentioned.

T. A. E. Weadock, Bay City, Mich.:

No. A year's experience in an office should also be required.

Jas. O. Pierce, Memphis, Tenn.:

Not always; there is no magic in it; a graduate should always be examined like any other applicant.

C. Suydam Scott, Lexington, Ky.:

I think any man ought to learn enough rudimentary law for admission in two years or less, but that the office work should be added or interlined in vacation, not prefixed. I am especially earnest about this latter, having suffered through all my earlier years of practice from the omission of it.

Henry Wade Rogers, Ann Arbor, Mich.:

No. I believe that the law should require a young man to spend two years in a law school and one year in an office. This is the very least that should be required. I am in favor of a three years' course in law schools. I do not think it would be practicable at present for the law schools in the West to lengthen their terms to three years.

Manuel Eyre, San Francisco, Cal.:

I do not think so.

Austen G. Fox, New York:

No. Three years are needed.

N. C. Moak, Albany, New York:

No. Should have office experience, besides at least one year.

Simeon E. Baldwin, New Haven, Conn.:

No, save in exceptional cases; but I should regard it as better preparation than three years in an office, unless in one where regular instruction was given.

John Doniphan, St. Joseph, Mo.:

Two years at a law school is inadequate to make a lawyer, and is generally a farce. A course of three years' study under the direction of a reputable lawyer, either in his office or the clerk's office and chambers, should be necessary before application for license.

Herman A. Haeussler, St. Louis, Mo. :

No. They need a business qualification.

Joseph B. Cumming, Augusta, Ga. :

No.

J. Vaughan Darling, Wilkesbarre, Pa. :

Three years, the last of which should be spent in the office of a practising lawyer, is the shortest period possible. In my judgment it should be longer, say four years for those of age when registered as students, and five for those under age. Of this period at least two should be spent in some law school, and in such law school the standard of examination required for graduation should be much higher than that which now prevails either at Harvard, Yale or Columbia law schools or that of the University of Pennsylvania.

Andrew T. McClintock, Wilkesbarre, Pa. :

I do not consider two years' study in a law school an adequate preparation for admission to the bar. There should be added thereto one, or better still, two years' study in the office of a practising lawyer.

L. D. Brewster, Danbury, Conn :

That depends. Generally not.

George A. Mercer, Savannah, Ga. :

I think a course of two years' study at a law school of approved reputation and standing, with evidence of proficiency from such school, would be adequate preparation for admission to the bar.

Pope Barrow, Athens, Ga. :

I think enough can be learned in two years, provided the foundation of a general education has been laid.

Henry Budd, Philadelphia, Pa. :

Two years spent at a law school is emphatically not an adequate preparation for admission to the bar. Nothing can compensate for the absence of a thorough, practical and learned preceptor, or supply what may be learned in an office. At the same time a law school training is very valuable, but should be made a year longer than in most schools as it is at present. This I think is now generally recognized here, and indeed, in the University of Pennsylvania, where the compulsory course is now two years, there is a voluntary post-graduate course of two years.

M. F. Morris, Washington, D. C. :

I think experience with us justifies the conclusion that a study of three years is as little as ought to be required for admission to the bar.

Gaylord B. Clark, Mobile, Ala. :

I think that two or three years' study in the office of a lawyer should be required, or that length of time in additional study or limited practice as attorney, added to the university law course, before the student is permitted to act as a barrister.

Augustus E. Willson, Louisville, Ky. :

For some people, but more would be better.

H. B. Brown, Detroit, Mich. :

To the supreme court.

James O. Pierce, Memphis, Tenn. :

To the highest court alone; it pertains solely to the judicial department, and should be relegated to the highest authority therein. Legislative regulation is unconstitutional.

T. A. E. Weadock, Bay City, Mich. :

To the highest court alone.

C. Suydam Scott, Lexington, Ky. :

For the sake of uniformity, I think it would be better to limit the power of examining to the highest court, or as these courts are already overworked it might be better to have a competent and adequately paid committee meet once or oftener each year at three or four points in the state to examine applicants.

Augustus E. Willson, Louisville, Ky. :

To all.

Matthew P. Deady, Portland, Ore. :

The power of admission to and expulsion from the bar should be confined to the highest court in the state.

Manuel Eyre, San Francisco, Cal. :

To the highest alone.

Rufus King, Cincinnati, O. :

In Ohio, examination and admission can be had only from the supreme court, at the capital, but the test, being lowered to meet the low standard of acquirements (a course of two years' study), necessarily fails to secure an educated bar throughout the state.

Henry Wade Rogers, Ann Arbor, Mich. :

In my opinion it is very important to have the power of examination restricted to the highest appellate court in each state. This is the only way to secure a high and uniform standard. I am also in favor of having in each state a paid board of examiners, who shall give their best attention to the examination of the candidates.

N. C. Moak, Albany, N. Y. :

To the highest court; one should have control of the bar.

Morris M. Cohn, Little Rock, Ark. :

To a sworn commission appointed by the appellate bench; to save expense to the student he should be permitted to make his application in writing, and a commission should be appointed of persons living as near his vicinity as possible, but they should not be persons from his immediate locality nor related to him. * * * The recommendations of the commission should be adopted if the requisite good character exists.

Simeon E. Baldwin, New Haven, Conn. :

To no court, but to a state board, appointed by the highest court, acting under rules framed by the board and approved by the court.

John Doniphan, St. Joseph, Mo. :

It would be better to require a public examination in open court by the judge and circuit attorney, the latter representing the state, and require proof by witnesses of good character, and require the judge to set out in the license that he was satisfied that the party was honest and competent as an attorney.

Herman A. Haeussler, St. Louis, Mo. :

Highest court only and no law schools.

Joseph B. Cumming, Augusta, Ga. :

One court.

Thomas H. Bacon, Hannibal, Mo. :

No; too much trouble.

J. Vaughan Darling, Wilkesbarre, Pa. :

The court of last resort, or a commission appointed from year to year by that court in conjunction with certain of the judges of the common pleas, or perhaps by a commission of the judges of the last named court, to be selected from the whole number.

Andrew T. McClintock, Wilkesbarre, Pa. :

To the court of last resort. Some time of practice in the lower court should be required for admission to the court of last resort, say at least two years.

Gustave Koerner, Belleville, Ill. :

Examination to be by members of the highest court ; none intrusted to a committee of lawyers. It helps to keep the rabble off.

Norman Paul, Woodstock, Vt. :

To the highest court in the state.

Geo. A. Mercer, Savannah, Ga. :

The examination and admission of candidates should be duly distributed among the superior courts of record in a state.

Pope Barrow, Athens, Ga. :

It ought to be taken out of the power of all the superior courts to license a lawyer. I do not know that it ought to be imposed upon the supreme court, but it ought to be confided to some authority which would be more particular than those to whom it is now intrusted.

Henry Reed, Philadelphia, Pa. :

To the highest court.

C. C. Baldwin, Cleveland, O. :

Ohio has changed from the first system to the supreme appellate court alone.

Henry Budd, Philadelphia, Pa. :

A central board appointed by the court of last resort. The result of local boards is to produce inequality of requirement. A young man admitted in the country, where good humor and easy letting through prevail, can practice in the city of Philadelphia although his attainments would not entitle him to admission were he to be judged by the rules prescribed for students here.

Gaylord B. Clark, Mobile, Ala. ;

The examination of candidates by courts * * * is a mere farce as universally conducted. I think there ought to be stated times and regular sessions of the appellate court for the admission of members of the bar ; that they should require of the applicant written answers to separate series of printed questions. * * * The value of the correct answer should be ascertained beforehand, and a certain standard should be fixed.

Jos. A. Wing, Montpelier, Vt. :

In this state, by the new rules, all applicants for admission to the bar are heard at the general term of the supreme court,
* * * where they are subjected to a rigid examination.

JUDICIAL OFFICE.

James O. Pierce, Memphis, Tenn. :

Appointed.

Jno. D. Gilland, Vicksburg, Miss. :

All judges should be *appointed*.

T. A. E. Weadock, Bay City, Mich. :

Elected.

C. Suydam Scott, Lexington, Ky. :

Appointment by the executive and senate.

Henry Wade Rogers, Ann Arbor, Mich. :

Appointed.

Frank Goodwin, Boston, Mass. :

They should be appointed.

John L. Bridgers, Tarboro, N. C. :

The judges should be appointed by the governor with the advice and consent of the senate.

Austen G. Fox, New York :

Appointed.

Geo. W. Biddle, Philadelphia, Pa. :

Appointed by the chief executive, and not elected.

N. C. Moak, Albany, N. Y. :

Doubtful; we elect, and in the main get as good men as when appointed for vacancies.

H. B. Brown, Detroit, Mich. :

Appointed.

Morris M. Cohn, Little Rock, Ark. :

The tenure of federal judges seems to me to be the best. I think that has been demonstrated in those states where judges are made elective.

Moses M. Granger, Zanesville, O. :

I believe the election of judges by the people has been and is a great evil. * * * As a general rule, the most successful manipulator of primaries has been chosen. Moreover, the best lawyers have generally been unwilling to go upon the elective bench for reasons well known in the profession.

Daniel H. Chamberlain, New York, N. Y. :

The question is incapable of direct and categorical answer. The best method depends largely on the history in the state in this respect. For example, in Massachusetts I feel sure that it would be most unwise to change the present method of appointment. In New York, likewise, I think it would be equally unwise to change the method of electing judges. * * * At the same time, I believe the change from the old to the present system was a mistake.

Simeon E. Baldwin, New Haven, Conn. :

Appointed by the executive.

William L. Gross, Springfield, Ill. :

Judges should be appointed by the executive on consideration of the recommendation of the bar alone.

John Doniphan, St. Joseph, Mo. :

Judges should be appointed or elected for long terms, not less than from ten to twenty years.

Herman A. Haeussler, St. Louis, Mo. :

Elected.

Jos. B. Cumming, Augusta, Ga. :

Appointed.

Thomas H. Bacon, Hannibal, Mo. :

Elected.

J. Vaughan Darling, Wilkesbarre, Pa. :

Appointed. The system best calculated to secure good judges, and to preserve the ermine unspotted, is nomination by the governor and confirmation by two-thirds vote of the senate.

Gustave Koerner, Belleville, Ill. :

The people having once enjoyed the right to elect will not give it up. The election of judges should be entirely separated from all other elections, as it is in Illinois. This has mitigated the system to some extent.

Norman Paul, Woodstock, Vt.:

In this state the judges are elected by the legislature once in two years, which gives entire satisfaction. The selection of judges does not enter into politics at all. * * * Usually the office is continued to the same person by successive re-elections as long as he will consent to serve. In the light of the experience we have had in this state, I should say that judges should be elected by the legislatures of the states.

L. Prentiss, Cleveland, O.:

Appointed by the governor with the advice and consent of the senate.

L. D. Brewster, Danbury, Conn.:

Elected by the legislature or appointed.

E. C. Eliot, St. Louis, Mo.:

Appointed.

Geo. A. Mercer, Savannah, Ga.:

Appointed by the governor, with the advice and consent of the senate.

Pope Barrow, Athens, Ga.:

I have never had a doubt that the system of electing judges was an unmitigated curse to any country.

C. C. Baldwin, Cleveland, O.:

I think as well or better elected.

Henry S. Neal, Ironton, O.:

Appointed. Judges should be as far as possible removed from all influences which sway the crowd. Popular opinion should be unheeded. The voice of the legal profession should be all-powerful in the selection of judicial officers. This would be the case if the power to appoint was vested in the governor of the state or an executive board.

M. F. Morris, Washington, D. C.:

Judges should be appointed, not elected.

Gaylord B. Clark, Mobile, Ala.:

Judges should be appointed by the governor and confirmed by the senate.

J. L. Robards, Hannibal, Mo.:

Appointed.

Joseph A. Wing, Montpelier, Vt. :

The judges in this state are elected by the legislature for two years, and if they are competent they are re-elected as long as they want the office, as a rule; they generally stay until they get a better office.

M. F. Morris, Washington, D. C.

Appointed, not elected; * * * and appointments should in general be restricted to selections from some definite number presented to the appointing power by the several bars or bar associations.

Augustus E. Willson, Louisville, Ky. :

Depends on the governor. As most governors are unfit to select judges, public common sense is safer.

Manuel Byre, San Francisco, Cal. :

1. By all means appointed. We suffer from the ignorance of elected judges, whose decisions command no respect, and greatly increase appeals, and who are dependent for re-election on party conventions or the favor of party bosses. Judges should be appointed, as those of the United States are : appointed and confirmed, if practicable, for a limited period, with the certainty of an appointment at the end thereof for life if they have been found efficient.

H. B. Brown, Detroit, Mich. :

Good behavior.

James O. Pierce, Memphis, Tenn. :

For good behavior.

John D. Gilland, Vicksburg, Miss. :

Our terms of judicial office are of about the proper duration, to-wit, four and six years for judges of inferior courts and nine years for judges of the supreme court.

Augustus E. Willson, Louisville, Ky. :

For good behavior. If term, a long term.

T. A. E. Weadock, Bay City, Mich. :

For five years.

C. Suydam Scott, Lexington, Ky. :

I prefer system of holding for life, ability and good behavior.

Matthew P. Deady, Portland, Ore. :

The only way to get a good judge, or at least to get the best one, is to make the position permanent and well paid—but

particularly the former. Good behavior is a good tenure in theory ; but the difficulty is to determine when the judge has misbehaved or what constitutes misbehavior. A fixed period of not less than ten nor more than twenty years is probably the best tenure, with the power in the legislature of summary removal in case of gross misconduct or inefficiency, by a two-thirds vote.

Henry Wade Rogers, Ann Arbor, Mich. :

Good behavior.

Frank Goodwin, Boston, Mass. :

The term should be for good behavior.

John L. Bridgers, Tarboro, N. C. :

For good behavior. If otherwise * * * he cannot help looking forward to another term for himself; and this desire to look out for himself will many times influence his conduct.

Austen G. Fox, New York :

Good behavior.

Egbert Whitaker, Saugerties, N. Y. :

Judges should hold for terms of five or six years.

George W. Biddle, Philadelphia, Pa. :

During good behavior.

N. C. Moak, Albany, N. Y. :

We elect for fourteen years and retire at seventy.

Morris M. Cohn, Little Rock, Ark. :

The tenure of federal judges seems to me the best.

U. M. Rose, Little Rock, Ark. :

The term should be long.

Daniel H. Chamberlain, New York, N. Y. :

If judges are elected their terms ought to be comparatively long, as in New York, *i. e.*, fourteen years.

Simeon E. Baldwin, New Haven, Conn. :

Good behavior, with the privilege of retiring at seventy years after say ten years' service.

William L. Gross, Springfield, Ill. :

For years—on long terms ; and the causes of impeachment and removal should be specified by statute, in specific and not general terms.

John Doniphan, St. Joseph, Mo.:

Judges should be appointed or elected for long terms, not less than ten to twenty years.

Joseph B. Cumming, Augusta, Ga.:

For good behavior. If for a term of years, a long term, say eight years.

J. Vaughan Darling, Wilkesbarre, Pa.:

The term should be for life or good behavior.

Andrew T. McClintock, Wilkesbarre, Pa.:

I would prefer the term to be for good behavior.

R. K. Shaw, Marietta, O.:

Moderate terms are best. A short term is too long for a poor judge and a good one can be re-elected.

Gustave Koerner, Belleville, Ill.:

As election cannot be abolished it may at least be made less hurtful by making long terms and providing against re-election. Supreme judges ten years at least. Circuit judges six years.

Norman Paul, Woodstock, Vt.:

Where the judges are elected by the legislature I should say that the term of office should be limited to two years and the judge should be eligible for re-election so long as he discharges his duty in a fair and impartial manner.

L. Prentiss, Cleveland, O.:

For a long term of years—say ten—subject to removal by impeachment for misconduct or incapacity.

E. C. Eliot, St. Louis, Mo.:

For years—not less than ten.

George A. Mercer, Savannah, Ga.:

For good behavior. If for years the term should be long—eight years at least.

Pope Barrow, Athens, Ga.:

For life or good behavior. It has a vicious tendency to put a judge on the bench with a term less than a life term. What we need in America is some sort of fortification, in our judiciary system, to protect the few against the many. Unfortunately we cannot have an independent judiciary if they are appointed or elected for terms of years.

C. C. Baldwin, Cleveland, O. :

Years—rather a long term.

Henry S. Neal, Ironton, O. :

The term of office for an upright and able judge cannot be too long; for a weak and inefficient one, too short. The longer the term the greater the probability there is of securing first-class lawyers to accept the position.

M. F. Morris, Washington, D. C. :

Life or good behavior, with a proviso that they should retire at sixty-five or seventy years.

Gaylord B. Clark, Mobile, Ala. :

The judges should hold office in such a way that there should be a change of one judge on the bench every two years

J. L. Robards, Hannibal, Mo. :

For good behavior until seventy years of age, and then retire upon half salary.

H. B. Brown, Detroit, Mich. :

Yes.

Jas. O. Pierce, Memphis, Tenn. :

Yes.

T. A. E. Weadock, Bay City, Mich. :

Yes.

Augustus E. Willson, Louisville, Ky. :

Yes.

C. Suydam Scott, Lexington, Ky. :

Yes. It does not seem to me best, in trying to avoid possible evil, to make an inflexible rule that would deprive us of our tried men.

Henry Wade Rogers, Ann Arbor, Mich. :

If elected, should be re-eligible.

Jno. L. Bridgers, Tarboro, N. C. ;

If elected, they should be ineligible for a second term. * * And it would be well to make judges ineligible to any other office unless they had resigned the judgeship say one or two years previous to their candidacy for any other office.

Austen G. Fox, New York ;

Yes; in every case.

Geo. W. Biddle, Philadelphia, Pa. :

They should be always re-eligible.

Manuel Eyre, San Francisco, Cal. :

Certainly.

N. C. Moak, Albany, N. Y. :

Yes.

U. M. Rose, Little Rock, Ark. :

Yes.

Daniel H. Chamberlain, New York, N. Y. :

Obviously, judges under the elective system ought to be re-eligible.

Wm. L. Gross, Springfield, Ill. :

Long terms and ineligible.

Jno. Doniphan, St. Joseph, Mo. :

Ineligible after filling a long term.

Herman A. Haeussler, St. Louis, Mo. :

Yes.

Thos. H. Bacon, Hannibal, Mo. :

No ; never.

J. Vaughan Darling, Wilkesbarre, Pa. :

If elected, the same person should be re-eligible.

Andrew T. McClintock, Wilkesbarre, Pa. :

If the judges are to be elected, make the terms long, say twenty-one years, never eligible under forty, nor to remain on the bench after seventy-five, and not to be re-eligible.

R. K. Shaw, Marietta, O. :

If a man serves well he is better equipped and ought to be re-chosen.

Gustave Koerner, Belleville, Ill. :

Ineligible.

L. Prentiss, Cleveland, O. :

My impressions are in favor of making judges ineligible for a second term. This would be solely on the ground of rendering judges in all cases thoroughly independent.

L. D. Brewster, Danbury, Conn. :

Always.

George A. Mercer, Savannah, Ga. :

Ineligible.

Pope Barrow, Athens, Ga. :

It is hard to tell; on the one hand, you might lose a good judge by rendering him ineligible; on the other hand, you would make him to a certain extent independent.

C. C. Baldwin, Cleveland, O. :

Yes, otherwise the best men must be dropped and an untried man taken.

Henry Reed, Philadelphia, Pa. :

Yes.

T. A. E. Weadock, Bay City, Mich. :

Yes, and this would be desirable.

James O. Pierce, Memphis, Tenn. :

There might be such a system, and it should be left to the judicial department to establish it; legislation in this and many other respects has trenched too far upon the constitutional power of the judiciary.

C. Suydam Scott, Lexington, Ky. :

As our courts are now constituted, both the appellate and circuit tribunals are too much crowded with work to be able to go to the help of each other.

Henry Wade Rogers, Ann Arbor, Mich. :

Yes, to both questions.

Frank Goodwin, Boston, Mass. :

Speaking for Massachusetts, it is suggested that no advantage is perceived in a provision for sending down judges of appeal to sit with trial judges.

Manuel Eyre, San Francisco, Cal. :

I do not think so in either case. Our commission has worked well. Our supreme court justices have been unable to keep up with the appeals, let alone performing such additional duty.

John L. Bridgers, Tarboro, N. C. :

To require the appellate judges to some extent to ride the circuit would be both beneficial and feasible; it would prevent their minds from becoming withdrawn from and unused to the common sense view of the affairs of life.

Austen G. Fox, New York :

To the first question, no. Tried in New York and worked badly. To the second, no. Judges of appeal are overworked now.

George W. Biddle, Philadelphia, Pa. :

I think all judges, even of the highest court of appeals, should be engaged from time to time in the original trial of causes.

N. C. Moak, Albany, N. Y. :

No.

U. M. Rose, Little Rock, Ark. :

No.

William L. Gross, Springfield, Ill. :

To the first part of the interrogatory, no ; to the second, yes.

John Doniphan, St. Joseph, Mo. :

My judgment would be that no material improvement would be made by the process suggested. * * * Some advantages might result from a supervision by supreme court judges of the inferior courts.

Herman A. Haeussler, St. Louis, Mo. :

Yes.

Thomas H. Bacon, Hannibal, Mo. :

No. Provide co-ordinate appellate courts with a court of umpirage to hear and decide all cases evoking conflicting decisions.

Andrew T. McClintock, Wilkesbarre, Pa. :

In my opinion the proposed flexible system would not obviate delays in the administration of justice in this state. * * * The system of sending down judges of courts of last resort to sit with trial judges in any case I deem impracticable under our judicial system.

R. K. Shaw, Marietta, O. :

Never send a man down to a lower court to get *set* in a wrong opinion. It took Ohio thirty years to get rid of the practice of sending the trial judge up to the district court with his *opinion fixed*.

L. Prentiss, Cleveland, O.

No.

L. D. Brewster, Danbury, Conn.

Little if any.

George A. Mercer, Savannah, Ga. :

The plan suggested could not be carried out in this state.

Pope Barrow, Athens, Ga. :

I think it would be a help to let the supreme court judges now and then come down and sit with the circuit judges.

Henry Reed, Philadelphia, Pa. :

This seems practicable.

Gaylord B. Clark, Mobile, Ala. :

I do not favor the suggestions of this paragraph.

Augustus E. Willson, Louisville, Ky. :

I think not to each part of the question.

CHAMPERTY.

E. P. Green, Akron, O. :

In my judgment it is injurious.

Augustus E. Willson, Louisville, Ky. :

I believe not, though I have seen some abuses.

H. B. Brown, Detroit, Mich. :

Not as a rule.

T. A. E. Weadock, Bay City, Mich. :

Yes.

C. Suydam Scott, Lexington, Ky. :

I believe the practice alluded to is seriously injurious.

Austen G. Fox, New York :

Very injurious and demoralizing to the individual.

George W. Biddle, Philadelphia, Pa. :

I think all such bargains injurious to the administration of justice.

N. C. Moak, Albany, N. Y. :

I think it so ; our court has just decided not.

Morris M. Cohn, Little Rock, Ark.

All attorneys caught fomenting litigation should be disbarred.

U. M. Rose, Little Rock, Ark. :

No.

Simeon E. Baldwin, New Haven, Conn. :

Not as a rule. It is often the only protection of the poor plaintiff.

William L. Gross, Springfield, Ill. :

No.

John Doniphan, St. Joseph, Mo. :

Many meritorious cases would never get heard except on the contingent employment of attorneys, and on the whole it is in the interest of the poor and the humble.

Herman A. Hacussler, St. Louis, Mo. :

Yes ; it is rascally.

Joseph B. Cumming, Augusta, Ga. :

Yes, scandalously so.

Thomas H. Bacon, Hannibal, Mo. :

Taking contingent fees may be injurious ; as where a contingent fee is taken from a man well able to pay a certain fee. But to take away from the poor the benefit of contingent fees is robbing Greathart of his sword. Usually the wrong complained of is the very act that beggars the plaintiff.

J. Vaughan Darling, Wilkesbarre, Pa. :

More than any one thing this practice has cheapened the character and lowered the reputation and standing of the bar.

Andrew T. McClintock, Wilkesbarre, Pa. :

Highly injurious to the administration of justice, and demoralizing to the profession.

Gustave Koerner, Belleville, Ill. :

The practice is in the main injurious to the administration of justice ; and yet there are cases where people would find no attorney at all to take their cases unless upon a contingency. Besides, every effort to prevent it by law would be a failure.

Norman Paul, Woodstock, Vt. :

ChamPERTY has never been practised to any extent in this state, and the evil consequences of the practice have never been developed.

L. D. Brewster, Danbury, Conn. :

Deadly.

Edward C. Eliot, St. Louis, Mo. :

On the whole, yes. In particular cases it seems to be desirable and almost unavoidable.

George A. Mercer, Savannah, Ga. :

As a rule the lawyer who engages in a purely speculative case enters it with the *animus* of gain and not with the true spirit of the profession.

Pope Barrow, Athens, Ga. :

In many cases it is an abuse which calls for correction.

R. W. Boyd, Darlington, S. C. :

It is often the duty of an attorney to take a case on a contingency. The wrong lies in the character of the case taken, and not in the fact that the fee is contingent.

Henry Budd, Philadelphia, Pa. :

The practice has, I think, a very injurious and depraving tendency, and ought not to be permitted.

Gaylord B. Clark, Mobile, Ala. :

As a rule, attorneys should make their contingent fees as few as possible, and should discourage arrangements of that sort with clients, as the tendency is certainly injurious to the profession, if not to the administration of justice.

J. L. Robards, Hannibal, Mo. :

No. On the contrary, where corporations are involved, justice is often denied persons really aggrieved unless counsel can be employed on their only means of payment, contingent fees.

H. B. Brown, Detroit, Mich. :

No.

T. A. E. Weadock, Bay City, Mich. :

This can be reached now by examining the client, if a witness.

E. P. Green, Akron, O. :

Such a rule should be recommended—and when he prosecutes on “shares” he is a party in interest, and should be party to suit, setting out in his petition what that interest is.

C. Suydam Scott, Lexington, Ky. :

I think the rule suggested might work well.

Matthew P. Deady, Portland, Oregon :

The interest of the attorney in the subject or event of litigation ought to be a proper matter of inquiry in any case, as an element thereof; and the adverse party ought to be allowed to put the attorney on the stand and examine him.

Austen G. Fox, New York :

Yes.

George W. Biddle, Philadelphia, Pa. :

I do not think it would be advisable to allow the defendant to interrogate the counsel of the plaintiff as to his relations with his clients touching his contract for professional compensation.

N. C. Moak, Albany, N. Y. :

No. One party ought not to be allowed to fish into dealings of the opposite party with his attorney.

Morris M. Cohn, Little Rock, Ark. :

All attorneys caught fomenting litigation should be disbarred. * * * Beyond this we think the public and the courts are not disposed to go. * * * It would perhaps tend toward obviating abuse if all litigants were required to pay the costs of litigation.

U. M. Rose, Little Rock, Ark. :

No.

Simeon E. Baldwin, New Haven, Conn. :

No.

William L. Gross, Springfield, Ill. :

No. The earnest lawyer will and ought to do all in his power within the law for his client on a regular retainer—he will and can do no more if his fee is contingent.

John Doniphan, St. Joseph, Mo. :

Any rule allowing the examination of an attorney as to his fee or his hopes in the case, would raise false issues and detract from the dignity of the profession.

Herman A. Haeussler, St. Louis, Mo. :

Yes; and if he is interested that way, case dismissed.

Jos. B. Cumming, Augusta, Ga. :

Yes.

Thos. H. Bacon, Hannibal, Mo. :

Yes, provided the plaintiff's attorney be permitted to voluntarily put his contract in evidence with comment on the measure of damages, and provided also that such contract be a lien on the claim.

J. Vaughan Darling, Wilkesbarre, Pa. :

If the practice of taking contingent fees is to be sanctioned, as it is by the Supreme Court of this State, then I think a rule of procedure should be recommended, as suggested in this question.

Andrew T. McClintock, Wilkesbarre, Pa. :

I would favor the rule suggested, * * * and I would go further, and make a conviction of champertous engagements a ground for disbaring the offender.

R. K. Shaw, Marietta, O. :

Each case should be tried on its merits, and not on outside issues. Our state allows the attorney and client to make their own contract, and it is not an issue in the case.

Norman Paul, Woodstock, Vt. :

Such a rule would not be beneficial to the profession.

L. D. Brewster, Danbury, Conn. :

Of course.

Edw. C. Eliot, St. Louis, Mo. :

A better way would be to provide that such agreements shall have no validity unless recorded or filed with the clerk, accompanied by an affidavit of the client that his cause is meritorious, and that he is without other means of prosecuting his suit.

George A. Mercer, Savannah, Ga. :

I could not recommend such a rule of procedure, but I might be willing to advocate a rule that would allow the defendant to examine the plaintiff himself, and which would subject to instant dismissal a suit thus ascertained to be champertous. It might be a part of the attorney's oath of office that he would not engage in suits of such a nature.

Pope Barrow, Athens, Ga. :

In my judgment, it would be a good rule to allow the jury to be informed as to who the real plaintiffs are.

Henry Budd, Philadelphia, Pa.:

Decidedly not. Such rule of procedure would tend to destroy the self-respect of the bar.

Gaylord B. Clark, Mobile, Ala.:

I do not think an attorney should be required to disclose his interest unless he becomes a witness in the case.

J. L. Robards, Hannibal, Mo.:

No. The professional relation should be sacred.

Augustus E. Willson, Louisville, Ky.:

No, decidedly not. I am opposed to any such proposition. In my practice I seldom have a contingent fee. The damage cases are not often in my care, but I don't believe in this superserviceable guardianship, on so many different pretexts, of people able to take care of themselves; nor in making recovery of real damages imperilled by matters not really touching the gist of the action—matters which, in my view, should concern the lawyer, not the client.

LAW REFORM BILLS INTRODUCED BY C. C. BON-
NEY, AND REFERRED TO COMMITTEES FOR
REPORT AT THE NEXT ANNUAL MEETING.

I. TO SECURE A UNIFORM PRACTICE IN THE COURTS OF THE
UNITED STATES.

II. TO REGULATE THE RELATION OF DEBTOR AND CREDITOR,
AND THE COLLECTION OF DEBTS.

III. TO ESTABLISH COURTS OF ARBITRATION.

I.

UNIFORMITY OF PRACTICE.

A bill for an act to provide a uniform mode of procedure in
civil cases in the courts of the United States.

*Referred to the Committee on Judicial Administration and
Remedial Procedure.*

*Be it enacted by the Senate and House of Representatives
of the United States of America, in Congress assembled :*

SECTION 1. That from and after the date of the passage of
this act, all civil suits, actions and proceedings in the courts
of the United States may, and after the expiration of one year
from said date shall be according to the forms of pleading and
rules of practice in equity, as now or hereafter estab-
lished: *Provided*, that in all cases in which there shall be a
right to a trial by jury, such trial of the issues to which the
right applies may be had upon the request of the parties or

either of them. Such request shall be in writing, and shall be filed in the case at least ten days before the time of trial, or within such further or other time as the court, either by general or by special order, shall allow therefor.

SECTION 2. All laws and parts of laws not consistent with this act are hereby repealed, such repeal to take effect in conformity with the provisions of this act.

POINTS IN SUPPORT OF THE FOREGOING BILL.

1. Most of the states now have a code practice which requires pleadings of an equitable nature. But the state codes differ in a multitude of details, while the present equity practice in the national courts has all the substantial advantages, without any of the disadvantages of the practice and pleading under the local codes. The equity practice of the United States courts is familiar to lawyers throughout the country, and has generally proved more satisfactory in methods and results than any other.

2. Any common law cause of action or defense can be easily and conveniently stated according to the forms in equity; and the issues of fact formed by a bill, answer and replication would be quite as clear to a jury as those made by pleadings at common law or under a code. Indeed, the manner of forming an issue in equity is much better adapted to the comprehension of a jury than either of the other modes. The replication might well be abolished by an amendment of the equity rules.

3. Experience has shown that where a jury is not called, except upon a special request, many cases will be submitted to the court, thus saving a great deal of time and expense. Lawyers are often unwilling to take the responsibility of waiving a jury, when they would not, on the other hand, take the responsibility of demanding one.

4. If a party have an equity case in another state, he can have his bill prepared at home by counsel familiar with all the

facts and circumstances, and then send it to counsel in the other state to file and prosecute. But if his remedy be at law, he must send such a statement of the facts as may be available to a distant lawyer who is a stranger to them, for him to prepare the declaration, petition or complaint, as the case may be. The lawyer who understands the facts cannot prepare the pleadings; and the lawyer who is familiar with the rules of pleading and practice can have only a superficial knowledge of the facts. Hence, omissions, mistakes and consequent losses are frequent.

5. The general welfare now requires that the uniformity of procedure, which in equity cases has proved so great an advantage, should be extended to cases at law, and such uniformity can best be secured in the way suggested. It is probably impossible to secure it in any other. The opposition to the adoption by Congress of any known code, or any new one that might be devised, would be overwhelming.

6. The uniformity of procedure above suggested would greatly facilitate inter-state relations, would be a great step in practical law reform, and would not entail any new burden of expense, labor or trouble.

C. C. BONNEY.

II.

INTER-STATE DEBTS, CREDITS AND COLLECTIONS.

A bill for an act to further regulate commerce among the several states, and particularly to regulate the relations of creditor and debtor and the collection of debts.

Referred to the Committee on Commercial Law.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

SECTION 1. That debts and credits, and the rights, liabilities and relations of creditors and debtors, in all cases arising out of any transaction, matter or thing belonging to commerce

among the several states, shall be subject to and governed by the following rules and regulations, unless otherwise, in a particular case or class of cases, expressly provided by some other statute of the United States.

SECTION 2. That the vendor of any goods, wares and merchandise, or any security, evidence of indebtedness or other personal property, shall have, against the purchaser thereof, and all persons holding under him, except as hereinafter specified, a lien and equitable mortgage on the same, for the purchase price thereof, or so much of the same as may at any time be unpaid; and such lien and mortgage shall extend to the proceeds of the property, so far as the same may be clearly traced, identified and separated; and particularly to any unpaid notes, bills or accounts receivable, taken and held for the same. Such lien shall be enforceable by a short bill in equity.

SECTION 3. Such lien and mortgage shall not be of any validity, force or effect, as against any third person who shall in good faith have paid or loaned any money for or upon such property, or shall have become bound so to do; nor shall such lien in any manner interfere with or hinder the free sale and disposition of any such property, according to the usual course of trade and commerce, but every such sale and disposition shall be wholly free from such lien.

SECTION 4. In case any debtor shall become bankrupt or insolvent, or shall fail and suspend payment of his commercial debts and liabilities, the seller of any such property as is above enumerated, for which payment has not been made or secured, may rescind such sale, in the whole or for any divisible part; and may thereupon proceed in any lawful manner to regain the possession of the property covered by such rescission: *Provided*, that such course shall not be taken in any case where any third person has in good faith acquired any right to or interest in the property by any payment, loan or contract made according to the usual course of business.

SECTION 5. That in case of the bankruptcy, insolvency, failure and suspension of payment aforesaid of any debtor, the creditor holding any claim or demand against such debtor, which has arisen in the course or from transactions belonging to commerce among the several states, shall be entitled to share in the proceeds of the estate, and to receive payment to the same extent in all respects as the most favored creditor who resides in the same state as that of which the debtor is an inhabitant, any mortgage, pledge, judgment or other security or proceeding to the contrary notwithstanding, except securities and transactions for actual money or its equivalent advanced by third persons to the debtor in good faith upon property set apart and pledged for its repayment.

SECTION 6. In case of the bankruptcy or insolvency, failure or suspension of payment of any merchant or trader, who is then owing any debt created in the course of commerce among the several states, whether such debt shall have matured or not, the holder thereof, or his agent or attorney, may apply to any court having equity jurisdiction to take charge of the assets and place of business of the debtor, and preserve the same from destruction and loss, and cause all the liabilities of the debtor to be ascertained and fixed, the credits to be collected or sold, the assets to be converted into money, either in due course of trade or by forced sale, and either for cash or on credit, as may seem best, and out of the proceeds thereof to pay, or permit the debtor to pay, to every creditor not a resident of the state in which the debtor resides, his proper share and proportion of the assets of the debtor, in case there shall not be enough to make payment in full of all the debts and liabilities.

SECTION 7. The homestead and household effects of any debtor, provided the same shall have been acquired and paid for in good faith, and shall be reasonably suited to his condition in life, shall not be deemed a basis of credit in any case under this act, but shall be exempt from process for the collection of debts, whether legal or equitable. In case any

creditor shall charge on oath that the homestead or household effects of any debtor exceed in value what is reasonably suited to his condition in life, or that the same, in whole or in any specific part, were not acquired and paid for in good faith, but were acquired and held in fraud of creditors, such charge shall be tried and determined, under the direction of the court, in as speedy and summary a way as the nature of the case may allow, and such order, judgment or decree be entered as equity and justice may require. No other or greater exemption shall be allowed in any case arising under this act.

POINTS IN SUPPORT OF THE FOREGOING BILL.

1. Efforts in this direction have hitherto been made under the power to establish a system of bankruptcy, but such provisions may with equal propriety be made under the power to regulate commerce, because they have the double nature of commercial regulations and methods of judicial procedure. And at the present time it is doubtful whether any bankruptcy bill can be passed in both houses of Congress, while it is presumed that there would not be much serious opposition to such a measure as the foregoing bill contains. The great and far-reaching power to regulate commerce among the several states has not heretofore received the attention it deserves. There is, probably, no other provision of the Constitution under which greater advantages can now be secured to the masses of the people, as well as to the business interests of the country.

2. The provisions of the above bill for a creditors' lien, as between himself and his debtor, saving all intervening rights; a rescission of the contract of sale, if the purchaser becomes unable to make payment, with a like saving; equality of payment between creditors residing in different states; the temporary preservation of a commercial business for the benefit of all parties interested—are so manifestly just that it may be expected they will receive general approval.

3. An obvious defect of most exemption laws is, that they ignore the varying conditions in life of different debtors. An exemption might be princely for a day laborer with no children, that would be beggarly for a merchant with a large family. The essential principle of all exemption laws is, that the necessities of family existence are not a proper basis of commercial credit. The theory of the law is, that with a reasonable exemption, the debtor will probably rally his forces, regain his position and again become a money earner. It is believed that Section 7 of the foregoing bill provides the best safeguards against imposition and fraud under the protection of an exemption law.

C. C. BONNEY.

III.

UNITED STATES COURTS OF ARBITRATION.

A bill for an act to establish Courts of Arbitration.

Referred to the Committee on Jurisprudence and Law Reform.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

SECTION 1. That every circuit, district and territorial court of the United States shall appoint and commission one or more persons to act as arbitrators of all such matters within the jurisdiction of such courts respectively, as shall be submitted to any such arbitrator for decision. Every such arbitrator shall be an officer of the court by which he shall have been appointed, and shall take an oath or affirmation to support the Constitution and laws of the United States, and faithfully to discharge the duties of his office, in all such matters as he shall undertake to hear and determine.

SECTION 2. Any person or persons acting as individuals, and any association, society or organization, whether incorporated

or not, or the officers or the governing committee or authority of any such body, may, with the concurrence of the other party to any controversy, conflict, difference or dispute, relating to any subject-matter arising under the Constitution or laws of the United States, or affecting the rights, interests or duties of the parties or either of them, under said Constitution and laws, submit the same to one or more of said arbitrators, to be by him or them examined, heard and decided in a summary and informal way, according to the principles of equity and justice applicable to the circumstances of the case. The submission shall be in writing, and shall be signed by the respective parties or by their proper representatives. Such submission shall give the arbitrator jurisdiction of the cause stated therein and shall stand in the place of process and pleadings. Evidence shall be heard, and the proceedings shall be had in a summary and informal way, according to such general or special rules and regulations as the arbitrator shall deem necessary or expedient.

SECTION 3. The respective parties to the controversy may, at their election, name in their submission an equal number of persons, not exceeding three on each side, to act as associate arbitrators in the decision of the cause, in which case such associates shall take an oath or affirmation like that above prescribed. The arbitrator appointed by the court shall preside and conduct the proceeding and shall be designated as the judge arbitrator.

SECTION 4. The court of arbitration, when acting as such, shall be entitled to the advice, assistance and protection of the appointing court, as occasion may from time to time require. The final decision of the court of arbitration shall in every case be filed in the appointing court, and shall be entered of record therein, and shall thereupon have all the force and effect of a final judgment or decree of such court, and shall be enforced accordingly. No appeal shall be allowed therefrom, but the appointing court may modify or correct the same in any matter to make it conform to the Constitution or

laws of the United States, or may set the same aside if it shall appear to have been procured through any fraud, accident, mistake or like wrong, and re-commit the matter for a further award.

SECTION 5. The compensation of the arbitrators and of their clerk, messenger or other assistants may be provided for in the submission of the case, otherwise the court of arbitration shall have power to fix the same and direct by whom and in what manner the same shall be paid, or may refer the question of such compensation to the appointing court, which shall thereupon have full power to fix the same.

SECTION 6. The Supreme Court may, at any time when it shall deem proper, make rules to secure a uniformity of practice and procedure in such courts of arbitration throughout the United States.

SECTION 7. The clerk of every court by which any judge arbitrator shall be appointed, shall, at the end of each calendar year, make up and transmit to the department of justice a report showing the number of arbitration decisions returned to the court during the year, and the nature of each case, the amount involved and the expense thereof, as nearly as can conveniently be ascertained and stated.

POINTS IN SUPPORT OF THE FOREGOING BILL.

1. The proposed system of arbitration could be put in operation throughout the United States at once.

2. It would effectually test the supposed public demand for courts of arbitration.

3. It would enable the parties to a controversy to control the expenses of its adjustment and to avoid the present excessive expenses and delays of ordinary litigation.

4. The machinery of arbitration would be simple and economical. No new system of forms and proceedings would be required.

5. Such courts of arbitration would at the same time practically operate as courts of conciliation for the settlement of controversies.

6. Safeguards against oppression, fraud and abuse of power are provided, and in the actual enforcement of decisions secured, by the power of the government, if necessary.

7. The reports required would show the utility of the system, also its defects and what further legislation would be expedient.

And, finally, the bill provides for a competent guide of the proceedings in every locality, and without such a guide no system of arbitration can be brought into general use.

If the experiment should prove successful, similar laws would speedily be enacted by the several states.

C. C. BONNEY.

OBITUARIES.

CONNECTICUT.

MAHLON ROCKWELL WEST.

MAHLON ROCKWELL WEST, a prominent member of the Hartford County Bar, and also a member of the American Bar Association, died at his home in Hartford, Conn., on the morning of April 22, 1886, after a short illness of only nine days. It was the good fortune of the writer to be on terms of the closest intimacy with him for more than thirty years, and for the past six years to have occupied the same office. Being closely allied to him by marriage, he can speak of him with a full knowledge of his private character and personal worth. Mr. West was not what the world would term a "society man," but chose rather the retirement of his own home, where, with his family and friends around him, he seemed to be content. He was a man of strict integrity. As a lawyer he was no trickster, but sought rather to find what the rights of his clients were, and once having satisfied himself on this point, to see to it that they were maintained and enforced. As a friend, that he was firm, steadfast, and unwavering, none knew better than the writer of this notice. To him he was "more than a brother." He was his "best, truest and most valued friend."

He was emphatically a self-made man. Mr. West was born at Stafford, in Tolland County, Conn., on the twenty-seventh day of August, 1826, being the youngest of a large family of children. His father, being poor, was unable to give his children anything more than a common school education, and this only to a limited extent. As he grew to manhood he

decided to make the study and practice of the law his profession. Consequently, with that end in view, in 1848 he entered the law office of the Hon. Alvan P. Hyde, then having an office in Stafford, his native town, but now a prominent and leading lawyer in Hartford. During this time he boarded at home, walking a distance of five or six miles daily. In this way he finished his education, earning money by teaching school in the winter to defray his expenses. He was admitted to the bar in Tolland County in 1850, and Mr. Hyde, having removed his office to Tolland, the county seat of the county, Mr. West opened an office at Mr. Hyde's old place in Stafford, where, with his indomitable pluck and perseverance, he built up a large and lucrative business, and came to be one of the leading lawyers in that his native county. In the fall of 1869 he formed a copartnership with the Hon. David S. Calhoun, then a prominent lawyer and now the honored and respected judge of the court of common pleas for Hartford County, and they opened an office at 357 Main Street, in the city of Hartford, under the firm name of West & Calhoun, continuing in partnership and doing a large and successful business until 1877, when Judge Calhoun's health having failed him he retired from the firm, Mr. West retaining the office and the business until his death. Mr. West was married in 1854 to Miss Julia A. Smalley, of Northfield, Vt., an estimable lady, to whom he was very much attached, and with whom he lived for more than twenty-five years. She died at Hartford in April, 1880. By this marriage he had one son, an uncommonly bright and promising child, and around this boy the father and mother's affections centered to a degree almost akin to worship, and when, in the winter of 1870-71, at the age of six years, he was stricken down with diphtheria, the hearts of the father and mother were nearly broken, and received a shock from which they never fully recovered. In the fall of 1881 Mr. West was again married to Miss Marcia A. Fairman, of Stafford, Conn., who now survives him. In politics Mr. West was a staunch Democrat. He was a

delegate to the Democratic National Convention in 1860, and supported the Hon. Stephen A. Douglas, of whom he was an ardent admirer, in that convention and in the election which followed. In 1874 and 1875 he was a member of the board of aldermen of the city of Hartford, one year acting as president of the board. In 1877 and 1881 he represented the town of Hartford as a member of the legislature. He was also a member of the board of school visitors for many years, and its secretary at the time of his death. In his death the city of Hartford loses one of its most worthy citizens, and the Hartford County bar one of its ablest and most respected members.

DISTRICT OF COLUMBIA.

JOHN FRANCIS HANNA.

JOHN FRANCIS HANNA was born on August 20, 1843, and resided in Washington City until our late civil war. The beginning of hostilities in 1861 found him a pupil at the Georgetown University, in the District of Columbia, but he at once returned to Virginia with his parents, who had formerly resided in that state. He was thereupon entered as a student at the Virginia Military Institute, at Lexington, where he remained until the cadets of that school were ordered into active service on the eve of the battle of Newmarket. The corps, three hundred strong, took an active and most creditable part in that engagement, and Lieutenant Hanna, of Company "D," distinguished himself by an act of individual bravery.

Mr. Hanna served continuously as an officer in the Confederate army throughout the remainder of the war, and was, at its close, a member of General Echols's staff.

Ill health and other accidental causes for a time prevented him from pursuing his intention of studying law, but in 1870 he was admitted to the bar of the supreme court of the

District of Columbia, after two years of study in the office of the Hon. W. S. Cox, now one of the judges of that court, and after a regular course in the law school of the Columbian University. From the time of his admission to the bar until a week before his death, which occurred on October 31, 1885, Mr. Hanna continued in the active practice of his profession, and enjoyed, in an exceptional degree, the esteem and confidence of his professional brethren and of the bench.

It ordinarily happens that the reputation of a lawyer among his professional brethren rests almost exclusively upon his intellectual attainments, for in the actual practice of the law the qualities of the mind tend to obscure even the strongest traits of the moral nature. The latter have, of course, an influence, but it is rather negative than positive. In the case of Mr. Hanna these ordinary relations were reversed. With him the very methods of thought and habits of business were dominated and controlled, in a most remarkable degree, by his moral qualities.

Perhaps the most positive and conspicuous trait in Mr. Hanna's character was his absolute fidelity in the discharge of the duties of life. No business task was so severe as to cause him to shirk it, and his utmost strength of mind and body were given to the service of those who relied on him. This conscientiousness would not admit that any work was so insignificant that it could be hurriedly or negligently performed.

Nor were his duties performed by him from the severe motives of an ascetic. Interest in and kindly feeling for his business acquaintances, and an almost womanly affection for his friends, made easy and pleasant for him the services which he rendered, and caused his labors or kindnesses to be thrice welcome to the recipients.

As may be well understood, Mr. Hanna was no less loyal to his friends than to those with whom he had no other than business relations. No friend in distress ever called on him in vain; no friend ever knew him to abuse a confidence; no friend ever failed to find in him an ever watchful defender.

Imbued from his earliest years with strong religious sentiments, he proved himself as loyal in the service of God as he was faithful in his relations with men; so that, even in his most thoughtless hours, he never forgot the Master whom he served nor the church he loved so well.

His unusual physical and moral courage never allowed him to temporize for an instant. His duty well determined, he reckoned not the risk in performing it; neither times nor places, nor the fear of bodily harm, nor the taunts of men, could swerve him from the line he had laid down.

A time came when pains racked his body and distress, his mind, but neither these nor even the well recognized approach of death could disturb his calm fortitude.

It would not be difficult, in the light of what has been said, to indicate generally the methods of Mr. Hanna's business life. He was well equipped with knowledge of the law, and was conscientious and successful in the performance of his duties, but he showed no desire to defeat justice by an appeal to legal subtleties, and was always restless when confronted with embarrassments of that nature.

He never thoroughly subscribed to the distinction between the recovery of a right and its recovery according to law. He rather believed in the maxim "*Ubi jus ibi remedium.*" His mind sought to work out carefully and fully practical results, and the accomplishment of this was his success and pleasure. The discussion of metaphysical distinctions gave neither grateful exercise to his intellect nor impulse to his work.

To the gentle nature and honorable career of the man and lawyer no higher tribute can be paid than honest sentiments of esteem from those whose good opinions any one might well be proud to earn; and such tributes are not wanting from the honorable in station, from the best intelligence of our land, from the poor who miss his unostentatious charity and from the friends who have lost his warm heart and strong and friendly hand.

ILLINOIS.

DAVID DAVIS.

This distinguished member of our Association was born March 9, 1815, and died June 26, 1886. He was a native of Maryland, and was of Welsh descent. He read law with Judge Henry W. Bishop, of Lenox, Massachusetts, was graduated in general scholarship at Kenyon College, Ohio, and in law at the Yale Law School. In the autumn of 1835 he removed to Illinois, settled at Pekin, was admitted to the bar, and commenced the practice of the law. He soon after removed to Bloomington, then a small village, but now one of the finest interior cities of the state, where he continued to reside during the remainder of his life, and where he died. In 1836 he first met Abraham Lincoln. They soon became warmly attached and continued through life devoted friends. In 1844 Mr. Davis was elected a member of the Illinois legislature, and in 1847 a member of the convention called to revise the constitution of the state. In 1848 he was elected a judge of the circuit court of the state, and continued to hold that office under successive re-elections till December 8, 1862, when he was appointed by President Lincoln an associate justice of the Supreme Court of the United States. He accepted that high office and held it till he was elected a senator of the United States in 1877, when he resigned his judicial seat, and entered upon his senatorial duties at the session which began March 4 of that year. When Mr. Arthur became President, Mr. Davis was elected his successor as presiding officer of the senate, and as such became Vice-President of the United States. He was frequently mentioned as a candidate for the presidency, and in 1872 was nominated therefor by the National Labor Reform Convention, held at Columbus, Ohio. He accepted the nomination, but after Horace Greeley was nominated at Cincinnati, he declined.

Judge Davis—for that is the name by which he is known to the American people—became a member of the American Bar Association at its first meeting in 1878, and for several years was Vice-President for Illinois. His bill for the relief of suitors who desire a review of circuit decisions, and to reduce the business that over-crowds the docket of the supreme court, by means of an intermediate national court of appeals, was approved by this Association after one of the most noteworthy debates that has occurred since our organization.

The limits of this occasion forbid any detailed consideration of the character of Judge Davis, or of the leading events of his long public career. As a young lawyer commencing practice, he attracted the attention and commanded the respect of the bench, the bar and the public. As a legislator he was thoroughly patriotic and conscientious. As a circuit judge he so endeared himself to the profession and the people by his efficiency and uprightness, that he practically held his office at his own pleasure. Transferred to the highest judicial tribunal in the world, he speedily won the confidence and admiration of the American bar as a great judge, distinguished by a vigor and grasp of intellect rarely surpassed. His opinions in the case of Myra Clark Gaines, the case of the Union Pacific Railroad Company, the Milligan Military Commission case, and other important controversies, settled for all time his rank as a great jurist. The secret of his success may soon be told. He was thoroughly trained in the common law. His *common sense* rose to the height of genius. His love of justice was supreme. His perception of the right was as clear as an eagle's vision. He realized the truth which so many judges miss, that the duty of a judge is to apply the law to the facts, not the facts to the law. The justice of a case lies in its facts, and a wise judge can almost always find, if he earnestly tries, in the vast store-houses of the law, something to sustain that justice. With what wonderful facility Judge Davis could do so, the lawyers of his circuit, both state and national, could testify abundantly.

As a man, Judge Davis was just and kind and neighborly. In 1838 he married a daughter of Judge W. P. Walker, of Lenox, Mass., who bore him a son and a daughter. The son became a farmer. The daughter married a son of Associate Justice Swayne, of the United States Supreme Court. The mother died in 1879, and in 1883 Judge Davis married Miss Burr, of Fayetteville, North Carolina, who survives him. In the history of Illinois, David Davis will always rank with Abraham Lincoln, Stephen A. Douglas and Ulysses S. Grant as one of her greatest men.

BENJAMIN S. EDWARDS.

BENJAMIN STEVENSON EDWARDS, the third and youngest son of Governor Ninian Edwards, of Illinois, was born at Edwardsville, Illinois, June 3, 1818, being the year of the birth of the state. In his early life he enjoyed the best educational advantages the new country afforded, and after the necessary preparatory training was sent to Yale College, where he graduated with credit in the class of 1838. He then studied law under Prof. Hitchcock and Judge Daggett, of New Haven, and completed his preliminary legal studies in the office of the late Judge Stephen T. Logan, of Springfield, Illinois, a distinguished lawyer, with whom he was afterwards associated for a time in practice.

On the thirteenth day of August, 1839, Mr. Edwards was united in marriage with Miss Helen K. Dodge, of New Haven, Conn., and settled permanently in Springfield in January, 1840. From this union there resulted three children, all daughters, and all since happily married. In March, 1840, Mr. Edwards obtained from the state supreme court of Illinois a license as an attorney-at-law, and entered upon the successful practice of his chosen profession. Shortly after his admission to the bar he formed a law partnership with the brilliant and eloquent E. D. Baker, who was killed at the battle of Balls Bluff in October, 1861. But this connection was not of long duration.

In October, 1843, Mr. Edwards, at the age of twenty-five, entered into partnership with the late Hon. John T. Stuart, who had then recently retired from Congress and resumed the practice of the law in Springfield. This firm continued in existence, and was known as that of Stuart & Edwards, until January, 1860, at which time Mr. C. C. Brown was admitted as a member, and the firm was then known as Stuart, Edwards & Brown until the death of Mr. Stuart in November, 1885, a period of over forty-two years. It was probably the oldest, as it was one of the ablest, legal firms in the state, and their business was very extensive as well as lucrative.

Being ardently devoted to his profession, Mr. Edwards had little time or inclination for politics. In 1862 he was a leading member of the constitutional convention of Illinois. In 1868 he was nominated for Congress on the Democratic ticket, and although in a strongly Republican district he made a brilliant canvass, largely reducing the Republican majority. In 1869 he was elected without opposition judge of the Sangamon circuit court, and after ably filling the position for about eighteen months he resigned and returned to the more congenial and remunerative pursuits of his profession.

In January, 1885, he was chosen president of the Illinois State Bar Association (with which he had been identified from its first organization), and prepared an elaborate and valuable address, which was read at the last annual meeting of the Association. The death of Judge Edwards took place at his residence in Springfield, after a short yet severe illness, on the fourth day of February, 1886.

As a lawyer Judge Edwards stood in the very foremost rank and honored and adorned his profession. He was endowed by nature with all the material requisites to success. He had a handsome person, a polished address, a fine legal mind and an easy, flowing and captivating delivery. Nor was this all; he had application and perseverance, and mastered or sought to master every case before entering upon its trial in court. His intellect was remarkably acute and discriminating, capable of

drawing the nicest logical distinctions, and combined with a facility of expression which enabled him to make his points clear to the dullest comprehension. He was not only deeply read and well grounded in the fundamental principles of jurisprudence, but was especially versed in the decisions of the courts of highest resort on all questions arising in his diversified practice, and he possessed the important faculty of applying his varied knowledge to the best advantage for the interests of his clients.

As a forensic speaker he was in most respects a model, and seemed equally at home in the discussion of questions of law or fact before a court or jury. Starting in life the junior in years with Lincoln, Logan, Douglas, Baker, McDougall, Stuart and others, who have recorded their names high on the scroll of fame, Judge Edwards sustained himself by his industry and his great and varied learning, and proved himself the peer of any of his associates.

Judge Edwards was not merely a profound jurist and an accomplished advocate, but he was a classical scholar, who found recreation and solace in sound literature, and he was a chaste and forcible writer. Nay, more, he was a christian gentleman, an active and useful church member and a liberal and public spirited citizen.

In his private and domestic relations he was a model husband, a tender parent, an excellent neighbor and a faithful friend.

RICHARD BIDDLE ROBERTS.

RICHARD BIDDLE ROBERTS was born at Pittsburgh, Pennsylvania, on the twenty-fifth day of August, 1825. His grandfather, Samuel Roberts, was the judge of the court of common pleas of Allegheny County from 1803 to 1820, and author of "Roberts' Digest of the British Statutes in force in Pennsylvania." His father was a soldier in the war of 1812, was bred in the law, and was for many years clerk of the United States courts for the western district of Pennsylvania.

Richard Biddle Roberts studied law in Pittsburgh, and was admitted to practice there in 1850. His early career is thus summarized in the minute adopted at a meeting of the Pittsburgh bar :

“He became a lawyer more from love of the profession he had from inheritance than by mere choice, for his ancestry had adorned the bench and been an honor to the bar. Always proud of the fame of his kindred, always filled with the idea that he was to match if not excel them, he entered his career with more hopes of fame than ordinarily stimulate others to effort. Nature had given him that pleasing address, quickness of wit and manliness of person that so much attract attention, win the eye and please the ear. These traits, with the acquirements that study had given, prepared him for his long and successful career in the profession. He grew in the favor of the people, was popular with his brethren, and in a few years took rank with those of acknowledged ability. He found time not only to prepare and try causes, but to address public assemblies on political subjects. The Democratic party claimed him as one of its highest figures, and soon honored him with the position of district attorney of the county, a position he filled with fairness and ability.

“Again resuming his practice, he followed it with commendable zeal until 1857, when he was appointed by President Buchanan district attorney for the western district of Pennsylvania, in which position he added to his already acquired fame as a lawyer by constant attention to the cases of the government.

“On the twenty-fourth day of April, 1861, Roberts went forth to battle, and on the 9th of June of that year was elected colonel of the First Pennsylvania Reserves, from which time until the battle of Antietam he was in the service of his country as an active soldier, aggressive, brave and efficient. His career in the army closed with that battle, where he commanded a brigade which performed brilliant service under his leadership. Shortly after he became

military secretary of Governor Curtin, of Pennsylvania, which position he held until the close of the war."

In December, 1869, he became a citizen of Chicago and a member of its bar, where his splendid qualities of head and heart at once provided for him a high place amongst the recognized leaders in the profession.

Never unmindful of the official dignity that should surround the judiciary, and of the respectful courtesies due to the bench and his brethren at the bar, a close observer of all the ethics of the profession, possessing a pure, elegant and copious diction, a keen and polished wit, genial, courteous and honorable, he won the respect and love of all who knew him.

In addition to the work incident to a successful practice, Col. Roberts found time to perform useful services outside of his professional career. He was for some time a lecturer on equity practice, real estate and criminal law in the Chicago Union College of Law, and in 1883 was chosen president of the Chicago Bar Association. As a counsellor he was wise and just; as an advocate, clear, convincing and brilliant; as a friend, faithful, kind and generous.

INDIANA.

THOMAS A. HENDRICKS.

This eminent citizen and distinguished member of our Association died at his residence in the city of Indianapolis on the twenty-fifth day of November, 1885. Mr. Hendricks was born September 19, 1819, in Muskingum County, Ohio. While yet an infant his parents removed to Indiana, where his boyhood and youth were spent upon his father's farm, near Shelbyville. Having in the common school, at home, acquired the rudiments of education, he afterwards attended, and graduated at, Hanover College, near Madison, in that state. He studied law partly at home, partly in the office of a relative

at Chambersburg, Penna., but was admitted to the bar and commenced the practice at Shelbyville in 1843. He resided at that place until 1861, when he removed to Indianapolis. He was actively engaged in the practice of his profession, save the intervals employed in the public service, down to the close of his life—for more than forty years—a period of professional labor not often exceeded. In 1848 he was a representative in the general assembly from his county, his first public station. He was chosen and served with acceptance as a member of the constitutional convention which met in 1850. He was then elected a representative in Congress for two terms.

In 1855 he was tendered and accepted the place of commissioner of the general land office at Washington, which he resigned in 1859. In 1863 he was chosen a senator of the United States for six years, and served as such with marked distinction, achieving national reputation as a parliamentary leader and as a skilled and eloquent debater. He was, in 1872, elected Governor of Indiana, being the first of his political party chosen to such a position in the northern states after the close of the civil war. In 1884 he was elected Vice-President of the United States, entered upon his duties as such on March 4, 1885, and died a few months afterwards, while in office.

In the retrospect of a public career, so long and necessarily so laborious, it may be asked what was the connection which Mr. Hendricks had with his profession; was it real or nominal? To which the reply must be, that it was real, actual. His employment lay also in the most difficult and important suits in the highest courts of his own and the adjoining states and in the supreme court at Washington. The two lives, political and professional, were synchronous—were lived and passed together—without jar or collision. Nothing else is needed to attest the rare capacity, the extraordinary powers, of one who united in himself so many qualities of intellectual excellence. It is believed that very few, even of his ablest

contemporaries, held a position so prominent in public affairs, and at the same time retained an acknowledged standing, at the head of the profession. Especially is this difficult now, when, owing to the marvelous expansion of commerce, arts and intercourse, the duties of the bar have become new, enlarged, exacting; when the politician fruitlessly devotes his leisure to keeping abreast with legislation and decisions; and the lawyer, as such, accounts it almost a disparagement to be at all identified with political management or agitation.

Nothing is more certain, with regard to Mr. Hendricks, than that the foundation for his professional eminence was laid in a careful and prolonged study of the common law. He had been at the bar about ten years when the code, of which he always spoke very highly, came into force. His mind, however, was of ample resource, and of a certain nimbleness of structure, so that he easily discarded the forms and fictions of the old system, retaining what was valuable herein of principles, and applied these to the new order of procedure which grew up around him.

His capacity as a lawyer was so general that it is hard to say in what branch of the practice he most excelled, still more so to determine in what, if any, he was deficient. As a pleader in stating the facts of a claim or defense upon paper, he was diligent, accurate, precise. He gave sedulous attention to the preparation of litigated causes for trial. He was much concerned about the appearance and demeanor of witnesses, the order of their introduction, the impression to be made upon the triers thereby, and the relations for the time being which might obtain between those who heard and those who delivered the testimony. He could foresee, from the beginning, what the relations of parties would be, or might become, to each other and to the suit in every possible contingency. He seemed to stand seised of the law and facts in a cause, in entirety, *per my et per tout*, in every aspect.

This power of discernment was in him exceptionally great. It was not so much an acquirement as a faculty, a sort of

subsidiary sense or sensibility—quiet, noiseless in its operation, yet most effectual. In the discussion of legal questions to the court, he was terse, concise; in citation, not profuse; in language, choice; in manner, extremely courteous, his complaisance seeming at times to detract somewhat from the force of the argument, yet no one was more successful in doubtful cases. In his address to the jury he was earnest, engaging the attention of his hearers from the first; in the narration of facts, very clear, careful, cautious; forcible without the clamor of too much vociferation; circumstances were closely knit together, and, as he proceeded, were dovetailed into the law of the case, so that the parts of his argument matched like mosaics in the finest mechanism. His reasoning was much aided by an air of suave plausibility and by a subtle economy which made the most of little when little fell to his side. His voice was singularly rich in the tone and fibre of entreaty and persuasion. Thus far in ordinary litigation. But his best field lay in the class of cases involving life, personal freedom, character or in those concerning acts either of a private or public nature, raising the problems which beset the line between law and liberty, lying in the province of so-called discretion. In these high mental and moral latitudes, where the studies of the jurist and the statesman meet and mingle, he was at home. Here his qualities of head and heart developed in full and magnificent proportions. It was his fortune many times to face, as an advocate, the hatreds, the prejudices, the unreasoning odium and fury of the time, fruits of the great civil and military commotions which characterized the last thirty years of our history. At such a conjuncture, no timidity disconcerted, no peril appalled him. His name will be the synonym of professional honor, courage and fidelity. There was a beautiful accord between his public and private conduct. His moral worth and rectitude were of the purest, highest character. His life as a citizen, lawyer and statesman was a model most worthy yet most difficult of imitation.

KENTUCKY.

JOHN WHITE STEVENSON.

The American Bar Association, with unfeigned sorrow, and a clear perception of his professional learning and signal ability, tried patriotism, lofty statesmanship, personal honor and unchallenged purity in public and private life, now records its sentiments on the death of its late President, John W. Stevenson, of Kentucky.

On the fourth day of May, 1812, in Richmond, Virginia, John White Stevenson was born. His father, Andrew Stevenson, married a daughter of John White, the grand-daughter of Colonel Carter Braxton, a signer of the Declaration of Independence, and was one of the foremost of the Virginia bar. He was reared under the inspiration of association with Jefferson, Madison and Marshall, and their companions, in the science of law and government. He served long in the State Legislature, was chosen speaker of the House of Delegates, was three times elected to the Federal Congress, was chosen by election as speaker of the House of Representatives, and closed his public life at the expiration of his service as American Minister at the court of St. James.

John White Stevenson was the only child of the marriage, his mother dying at his birth.

Left motherless, his nurture and training became the ceaseless care of his father. His grandmother, Mrs. Judith White, and his aunt, Mrs. Judge Brockenborough, performed a mother's duty to the child till his eleventh year. Faithfully and lovingly that duty was discharged. At the age of twelve, John was taken to his father's home in Richmond. His step-mother, a woman of culture, grace, charming disposition and Christian faith, planted in the mind of the youth sound religious principles. These he never forgot, nor failed to render gratitude for the instruction he thus received. On his father's election to Congress in 1821, he considered the time had come

for a more thorough instruction preparatory to his son's college course. Going to Washington he was carefully trained under the supervision of his father, by tutors, and entered the Hampden and Sidney College at the age of fourteen. He remained there two years, and was transferred to the University of Virginia, at which he graduated at the age of eighteen.

On his graduation he entered the law office of the Honorable Willoughby Newton, in Westmoreland County, Virginia, and after concluding his professional apprenticeship was admitted to the Virginia bar in the year 1839.

The opportunities afforded to John W. Stevenson to spend his early manhood in such close association with the great men of his country were exceptional. Few young men were so fortunate. He delighted to the very close of his life to recount memorable occasions in which he received the kindest recognition, advice and instruction from the most brilliant and able of those men of Virginia, in its golden age.

Jefferson, Madison—indeed, nearly all of the jurists and statesmen of that epoch, permitted him to enjoy an intimacy, during which he learned lessons in principles of government and jurisprudence he never forgot. Equipped by such training, John W. Stevenson, by the advice of Madison, left Virginia to settle in the West. He selected Vicksburg as the place in which to practice his profession.

His prospects were not assuring, for at that early day neither the population nor demands for professional labors offered hope for fame or fortune. After full consideration Mr. Stevenson concluded, in 1840, to go to Covington, in Kentucky. In 1841 he entered the law office, in that town, of Mr. Jefferson Phelps, and there remained till the death of Mr. Phelps, in 1843.

The knowledge he gained of the habits, opinions and character of the people who were then laying the foundations of the country west of the Allegheny Mountains was of great value in after life to Mr. Stevenson. Leaving Richmond with a few books in his saddle-bags, some of which were the

gift of Mr. Madison, he leisurely journeyed on horseback along the line of settlements till he reached the Mississippi River.

What impressions were made during this long travel can best be ascertained by the influence they had on his forming character. The soul of honor, cool, brave, reflective, conscientious, imbued in youth with the best religious teachings, with a good education and well instructed in his profession, Mr. Stevenson began the practice of the law under marked advantages.

Taught the principles of constitutional government by lessons from its fathers, the spirit of jurisprudence by Marshall and his associates, state and federal, during the frequent occasions he was in their society; young, observing and impressible, Mr. Stevenson was prematurely ripe when he began his professional life in Covington.

A conservative, but a state rights Democrat from conviction, he very soon was felt to be a power. A well-trained lawyer, the bar early observed his ability, professional learning and his eloquence. Modest, unpretending and of the most attractive manners, he was popular. His solid acquirements, often lighted up with humor, made him an agreeable companion.

With such a foundation for popular favor, and securing strong personal friendships, Mr. Stevenson took a prominent place in public estimation. He never lost it.

In 1845 the people of his district elected him to the Kentucky legislature. On two successive elections he was again returned. It could not be otherwise than that his position was marked in the legislature of the state. This was acknowledged.

In 1849 he was elected a delegate to the convention to amend the constitution. He was especially qualified for the duty imposed on him in this sphere of public service. Well he performed it. Public attention was directed to the part he unostentatiously assumed, in the important work of constructing the organic law of the commonwealth.

During his service in the constitutional convention, he was

in 1844 elected to represent his party in the Democratic Federal Convention of that year. Again in 1848, 1852 and 1856 he was thus honored. He was the president of the convention of 1880 that nominated General Hancock as a candidate for President of the United States. Twice he was selected as the senatorial elector on the Democratic Kentucky electoral ticket. The people of his congressional district elected him to the thirty-fifth (1857) and thirty-sixth (1861) federal congresses.

"Anointed with the oil of the ballot box," he grew in favor with his constituents. His popularity did not depend on a pliable subserviency to mere partisan power. He proved his qualifications as a representative, by a high conception of his trust, and a discharge of its responsibilities based on an enlightened understanding of its obligations.

A Democrat of the school of Jefferson and Madison, he was an apostle of the strictest construction of the federal constitution. A statesman by training and experience he proved his political faith by able arguments in its support. In the legislature of his state, in its constitutional convention and in Congress, Mr. Stevenson's speeches were a masterly exposition of the principles on which our state and federal systems were founded. He believed that the doctrine of the limited nature of the powers granted by the states was essential to the preservation and perpetuity of the federal government. Established by the sovereign power of states it could only be maintained by the positive and unqualified recognition of its origin, and a strict adherence to the powers conferred in its written charter. The record of his public life is an unbroken testimony to these opinions. He refused to vote, as a senator from Kentucky, to appropriate public money for the "Centennial Exhibition" held at Philadelphia in 1876, because the constitution did not grant to Congress the power so to appropriate the money of the people, raised by taxation for the support of government.

In the thirty-sixth Congress Mr. Stevenson's position was

embarrassing. It was the eve of the schism of the sections. He, by blood and education a Virginian, represented a Kentucky constituency. His duty and obligations both led him to a conservative course. With the friends of Jackson, he rejected nullification. Now as a patriot and statesman he had to consider the issue that secession presented.

The letter and spirit of the federal constitution to him were the guides for his action. To reconcile secession with their monitions was a cause of anxious thought. To the separation of the states was superadded separation from the friends of his youth and the ties of family connections.

True to the teachings with which he was indoctrinated, he belonged to Kentucky and was ready to share its fate. The union of the states claimed an allegiance which he believed ought not to be rashly severed. He returned home after the adjournment of Congress. There he came to the final decision as to his political course. He was with his state.

So able a statesman, so able a jurist, so irreproachable a man, could not long be withdrawn from public service. In 1867 he was elected Lieutenant-Governor. Governor John W. Helm died five days after his inauguration, and Lieutenant-Governor Stevenson became Governor. At the next election Lieutenant-Governor Stevenson was elected governor by the people of the state, receiving the largest majority ever given in that commonwealth to any candidate for the office of governor.

The state papers of Governor Stevenson bear the impress of his character. His administration was so well approved that before the expiration of his gubernatorial term the legislature of Kentucky elected him United States Senator.

On the 4th of March, 1871, he took his seat in the Senate of the United States. The six years he served in that branch of the federal congress, representing the sovereignty of the states, brought him before the country as an example of great ability, learning, purity of character and conservative political opinions which did honor to him and the state he represented.

On the expiration of his term he returned to Covington. In the law school of the Cincinnati College, Mr. Stevenson was a professor of commercial law and contracts. He endeared himself to the students by his grace of manner and personal magnetism. In the chair of these branches of jurisprudence his lectures were marked by learning and ripe experience. As a teacher he rose to distinction. In all the posts of public service he filled, he never failed to attain pre-eminence.

The American Bar Association elected Mr. Stevenson its President in the year 1884. At its annual meeting in August, 1885, the address required by the rules of the Association from its president, reviewing the state and federal legislation on law and practice and the enactment of statutes relating to subjects within the especial domain of jurisprudence, was most interesting and valuable to the profession.

At the meeting in 1883, Mr. Stevenson presented as the annual address a discourse on Madison. The subject was suggested at the request of many of the members.

The ability which this sketch of Madison manifests gives it great value as a contribution to the history of our country.

Credited with being almost the father of the federal constitution, if not one of its authoritative interpreters, "The Federalist," "the Madison papers," and Madison's notes of the proceedings of the convention that formed the constitution of the United States, attest the relation James Madison bore to the formative period in the government of the country.

Mr. Stevenson was perhaps the only living man who could have written this paper with the authority he gave to it from his personal knowledge and the information he possessed. Published in the transactions of the Association at its session of 1834, it attracted special attention. Students of our political history have recognized in it clearer views of Mr. Madison's character.

As this was perhaps among the last productions of Mr. Stevenson's pen, it is appropriate here to reproduce the opening sentences. They will in some degree portray his style and indicate his opinions.

“The century has not yet closed within which thirteen independent sovereign states, weakened and worn down by a protracted and bloody revolutionary struggle for their independence against the arbitrary oppression of their mother country, embarrassed with debt; overwhelmed with a depreciated and almost worthless paper currency; with limited powers; and at a period (it has been said) the most critical, if not the most fearful, in the history of the human race, being that preceding the early French Revolution—formed and ratified the constitution of the United States, creating thereby the union of the states under a compound form of constitutional self-government, the constitution enumerating all the powers delegated to the new government, reserving all others to the states or to the people.

“The far-seeing founders of this experimental system of government, versed as they were in the former failure of popular efforts in that direction, not less than thoroughly conversant with the character, circumstances and genius of the people whose organs they were in that great work, sought to found a free republic in which the people were the source of all sovereign power, empowered to administer the government through certain delegated agencies, to each of which was assigned and marked out certain well-defined orbits of action, prescribed in the constitution, declared to be the supreme law, binding personally upon the people and their agents, and so to remain until changed by a like solemn and authentic act of the public will, in manner and form prescribed therein.

“It was under such a government, with its mutual checks and balances, its barriers against every assumption of arbitrary, unlicensed power—from within or from without; from one, from the few, or the many—and especially by a just and proper distribution of the federal power with the local systems of the states, that its authors foresaw the highest guarantee for public order, peace and individual liberty. To-day, as we look back on the faith and courage of these founders of our government, after the experience of ninety-six years of their

work, what American heart is not lifted up in thankfulness to God for his merciful protection, and with grateful wonder at the reach of practical wisdom and far-seeing statesmanship displayed in the formation of the constitution of the United States! Compare, I pray you, the condition of the country then and now."

Governor Stevenson's legal and literary attainments were of a high order. His private letters are models of epistolary style. He was a student always. Before the court, he attracted the closest attention by the masterly presentation of his arguments and the effectiveness of his delivery. Not an orator in the technical sense, he was impressive by the command he manifested of the principles of law he invoked and applied.

At the age of thirty, Mr. Stevenson married Miss Sibella Winston, whose family was among the most distinguished of the early settlers of Kentucky. Five children were born of this marriage, two sons and three daughters. The eldest, Andrew, is a resident of Montana; the second, Dr. John Stevenson, is a physician of growing reputation in Cincinnati. The second daughter married Mr. Edward Colston, of the legal firm of Hoadly, Johnson & Colston, of Cincinnati; and two daughters are yet unmarried.

John W. Stevenson was a true type of Southern character. It was, therefore, a marked characteristic of his home.

He was a Christian by faith and conviction. A communicant and vestryman in the Episcopal Church, and a delegate from his diocese to the conventions of the Episcopal Church of the United States, his life was a witness of unostentatious fidelity to his religious obligations and duties.

Early in August last he left home to be present at the commencement ceremonies of the Sewanee University in Tennessee. While there he was taken suddenly ill and was brought to his home in Covington. The illness was fatal, for on the 10th of August, 1886, he died.

So ended the life of a pure patriot; an enlightened

statesman; an able jurist; a sincere Christian; an old school gentleman; and a citizen without reproach.

In private life a model of domestic virtues; in public life an example of the highest conceptions of the responsibilities and obligations of public service. Following the logical conclusions of the convictions of his judgment, he was a representative man in every station he was called upon to fill.

MISSOURI.

JOHN H. RANKIN.

The death of John H. Rankin adds another name to the list of those members of the bar who made St. Louis their home when it was but a small town, and whose history is peculiarly a part of the history of that city. Mr. Rankin came to St. Louis from Pittsburgh in 1847, and practised law there continuously from that year until 1877, when he retired from the active pursuit of his profession. During these thirty years—a period the most eventful in the history of the city, and marking its greatest growth—he was engaged in the fullest practice of the law. With nothing to rely upon, at the outset, except his own resources, he worked his way to the front rank in that department of the law which he had chosen. Fame and fortune came to him as the result of untiring efforts and an almost exclusive devotion to the practice of the law during thirty years.

His intellect was strong, but not subtile, its characteristic attributes being force and directness, and that balance of mental powers which constitutes sound judgment and shrewd sense. Owing to his plainness of manner, his carelessness of form and his dislike of display, his intellectual power, exhibited in the contests of the bar, always appeared less than it really was. It was only those who looked beneath the surface that saw the force, the insight, the discrimination of his vigorous understanding. It was his habit to theorize very

little in his cases. He selected the strong points and insisted upon them alone. His energy was untiring, his devotion to his clients' interests complete. Though not a master in the technical learning of his profession, he studied hard and always kept himself well informed in his chosen department. This was the law of shipping, of marine insurance and of navigation generally, as then practised in the courts of his state and the United States. During many years, when this was one of the most important and lucrative branches of practice in the West, there were few cases of moment of this kind, in his vicinity, in which he was not counsel.

In the long period of his practice none could point to any act of his that was even unbecoming. He had an instinctive aversion to wrong, even to disingenuousness, and often refused to take cases which were perfectly legitimate, but which, as he thought, had dubious surroundings. His was that character which of old was pronounced "*Res miranda populo*," but which, as the profession knows, has more than a merely ideal existence—a perfectly honest lawyer. Though quick of temper, and by nature impulsive, his self-control always rapidly asserted itself, and, instead of being quarrelsome, he was, with all his quickness, one of the most agreeable and genial of men. His life-long habit of unostentatious charity testifies to his sense of duty, to the goodness of his heart and to his hatred of display. This same aversion to show, united with his love of quiet, prevented his ever holding or seeking any public position, or, except in his profession, appearing on any public occasion. He presented an example, rare, indeed, in the practice of the law to-day, of an eminently successful, yet a modest and retiring lawyer. By him notoriety was as sedulously avoided as by some it is sought.

In 1877 he retired from practice and passed several years in travel in Europe. Upon his return he attended to professional business only as an occasional occupation. It was while living at his ease, and enjoying apparently the best of health, that he was attacked by that disease of the heart that has deprived

the bar of one of the soundest and most upright of lawyers, the community of one of the most beneficent of its members, and his friends of an active sympathy and a kindly companionship which, in their minds, will ever be associated with his name.

OHIO.

MURRAY COLEGATE SHOEMAKER.

MURRAY COLEGATE SHOEMAKER died on the 8th of April, 1885. He was born at Tiffin, Seneca County, Ohio, on September 17, 1844. He was the son of the late R. M. and Mary C. Shoemaker. His early education was received at the Cincinnati public schools, at Kenyon College, at Gambier, Ohio, and at Yale College, where he graduated in the class of 1864. The next winter he spent at the Columbia Law School. In the spring of 1865 he went to Kansas, where he spent his time until 1868 in assisting his father in the building of the Kansas Pacific Railroad. He was admitted to the bar of Ohio in 1866, and after his return from Kansas began the practice of law in Cincinnati as a partner of Honorable Alphonso Taft, late attorney-general and minister to Austria and Russia, and his son Charles P. Taft, now editor of Cincinnati *Times-Star*, under the firm name of Taft & Shoemaker. He was secretary of the Cincinnati & Springfield Railway Company from 1872 to the time of his death, and of the Cincinnati Common Carrier Company, operating the Cincinnati Southern Railway, as long as that company was in existence. On November 1, 1879, he became a member of the law firm of Stallo, Kittredge & Shoemaker, and afterwards of the firm of Matthews & Shoemaker, of which last named firm he was a member at the time of his death.

His death was caused by nervous prostration, largely brought on by an accident in the winter of 1883-4. He leaves a wife, a daughter of Honorable James Marvin, of Saratoga, to whom he was married June 3, 1869, and two children.

PENNSYLVANIA.

THOMAS EMLEN FRANKLIN.

THOMAS EMLEN FRANKLIN, LL.D., a distinguished lawyer, and one of the most prominent citizens of Pennsylvania, died at his home in Lancaster, November 28, 1884. His father was Judge Walter Franklin and his mother Anne Emlen, whose father was a highly esteemed and influential preacher of the society of Friends. Judge Franklin was a distinguished jurist, and occupied the bench of the second judicial district for a period of twenty-five years and until his death. Thomas Emlen, the subject of this sketch, was born in Philadelphia, April 20, 1810, where his parents then resided, but who returned to Lancaster a year later. He obtained his early education in the day schools of Lancaster and at the mathematical school of Joseph Hoopes, at Downingtown. He entered Yale College in September, 1824, from which he graduated with honors in 1828. His classmates embraced the names of many who afterwards arrived at distinction, among whom are Chief-Justice Strong of the United States Supreme Court; President F. A. B. Barnard of Columbia College; Gov. W. W. Hoppin, of Rhode Island; Prof. D. E. Bartlett; Rev. Dr. Bascom; Rev. D. E. Daggett; Prof. H. M. Day; and Prof. Hubbard. He was recognized as the best mathematician in his class, and among his literary exercises he wrote a drama which was enacted before an auditory of two thousand people with marked approbation. He was admitted to membership in the "Phi Beta Kappa" and "Chi Delta Theta" societies, at that time an honorable distinction and an evidence of a superior scholarship. Upon his return from college he read law with his brother-in-law, Washington Hopkins, and was admitted to the bar in 1831, the year of his majority, and at once opened a law office in Lancaster, where he spent his whole life, fifty years of which he devoted to the active duties of his profession.

Few men enjoyed in a larger degree the confidence and trust of his fellow citizens. In 1833, when he had been in practice only two years, he was appointed prosecuting attorney for the mayor's court and served for three years. His ability as an advocate and his quick perception and just construction of the law soon gained him prominence among the foremost talent at the Lancaster bar, then only second in ability in the state, and adorned with such names as James Buchanan, James Hopkins, Amos Ellmaker, John R. Montgomery, Reah Frazer, Walter Franklin, Molton C. Rogers, Henry G. Long (now the senior member of the bar), Benjamin Champneys, Alexander L. Hayes, the five last named having presided over the several circuits.

Mr. Franklin, in April, 1851, was appointed attorney-general by Governor Johnson, serving until the end of the administration. He was appointed a second time in 1855 by Governor Pollock, retiring with the governor in 1858. In 1844 he was the Whig delegate from Lancaster county to the Baltimore convention which nominated Henry Clay for the presidency, and again to the national convention in 1848 which nominated General Taylor. In 1864, in conjunction with Hon. Thaddeus Stevens, he represented the Lancaster congressional district in the national convention which nominated Abraham Lincoln for re-election. In 1847 he was chairman of the Whig state central committee. In 1861 Governor Curtin appointed him delegate to the border state convention, known as the Peace Convention, held at Washington. His Quaker lineage, early education and gentle nature caused him to revolt at the thought of fratricidal strife between the states, and prompted him to give his influence for the preservation of peace, but his patriotism rebelled against the proposition of "peace at any price," and when the overt act of rebellion was committed no more zealous supporter of the Union cause could be found than Thomas E. Franklin.

Besides attending to his large and lucrative law practice, and discharging the duties of official position already mentioned,

Mr. Franklin was charged with various local trusts. He was one of the original directors of the Lancaster, Portsmouth & Harrisburg Railroad Company (now a part of the Pennsylvania main line), and for many years its solicitor, and a director of the Farmers' National Bank; president of the Lancaster Fire Insurance Company, besides director in and counsel for several local corporations.

There were three objects in life to which the subject of this sketch was zealously devoted—his family, his church and his profession. Early in life the tempting allurements of political preferment were spread before him, but he steadily refused all official position not in the line with the calling he had chosen or that might interfere with its successful pursuit. And in this trait of one so successful in life the young men of to-day may read a useful lesson between the lines of this tribute. Of his devotion to his family it does not become us to invade the precincts of the home; but the writer knows, for it was only a short time before his death that I heard him say, that it was a great source of satisfaction to know that his children had not been unmindful of their father's precept and example. In his devotion to the church he strikingly illustrated the sentiment of the poet: "A Christian is the highest style of man." He was junior warden of St. James' Episcopal Church for several years, and later on and until his death senior warden of St. John's. A lay deputy to the diocesan convention through successive years, he took a prominent part in the shaping of its legislation, was active in organizing the board of missions, and a liberal contributor to it and to St. John's Church. He was a lay deputy to the general convention of the Protestant Episcopal Church, which met in Baltimore in 1871, and in 1881 he was elected chancellor of the diocese of Central Pennsylvania, a relation which was severed only by his death. In June, 1874, Franklin and Marshall College conferred upon him the honorary degree of LL.D.

While a few may have excelled Mr. Franklin in quarter sessions oratory, he was regarded in his prime as the clearest

headed counsellor in the Lancaster bar ; and during the decade of 1850-60 there was not an important case before the circuit courts in which he practised that he was not engaged. He was a member of the American Bar Association since its organization, the Pennsylvania member of its general council and president of the Law Library Association. The meeting of the bar called to pay a tribute to his memory was largely attended, and characterized by unusual feeling, inasmuch as of the list of members when he was admitted only three were among the survivors. Fitting eulogies were passed upon his integrity, his thorough and extensive legal knowledge, his fidelity to court and client and his courteous demeanor in the trial of cases ; but no more fragrant wreath was laid upon the bier by his professional brethren than the following : " That in his domestic and social relations as a husband, father, friend and neighbor, his conduct was alike just and exemplary, and the crowning grace of his private character was a consistent and practical recognition of that other relation—the deepest and most solemn of all—the relation of the creature to the Creator. This relation, the foundation of all duty and upright conduct, he felt and he acknowledged. He had a deep reverence for the Scriptures, with a firm belief in their divine origin. He honored the pure morality which they teach, and he rested in confidence in the hopes of that future life they impart."

Realizing that his end was near, with the loved ones gathered, sorrowing, around his bedside, calmly and peacefully and painlessly he awaited the final summons of Him whom he had so long and faithfully yet unostentatiously served. When consciousness was departing and loving efforts were being made to restore sensibility, the venerable Christian, realizing the uselessness of human effort, calmly whispered, " Vain is the help of man." And these were the last words he uttered. His devoted friend, Bishop Howe, with whom he often " took sweet counsel together and walked unto the house of God in company," officiated at the funeral obsequies, and we cannot close this friendly tribute more appropriately than

by quoting the following from his address before the diocesan convention of the following year: "We have missed from our councils for two years past one who within a twelvemonth has joined the congregation of the dead. The Hon. Thomas E. Franklin, late of St. John's, Lancaster, was a deputy from Pennsylvania in the general convention of 1871, at which the separation of this diocese from the original jurisdiction was consummated. Mr. Franklin ranked with the foremost of the distinguished men who have made the bar of his district illustrious. Withal he was an elegant and refined scholar in general literature and a gentleman of gracious instincts and polished manners. Better than all, he was a most devoted, consistent, uncompromising Christian man. He was always ready to serve the church, giving freely of his substance, his time and counsel for its benefit. In 1880 he was elected chancellor of the diocese, and for four years discharged the duties of the office with promptness and ability. Failing health compelled him to decline a re-election when we met a year ago. On the first day of December last, lamented by all good men in the city where his exemplary life had been spent, we carried him to his burial. 'May light eternal rest upon him.'"

JOSEPH P. GROSS.

JOSEPH PETER GROSS, a member of the junior bar of Philadelphia, died December 21, 1885.

Mr. Gross was born November 13, 1850. He was graduated with high honors at Dickinson College, Carlisle, Pennsylvania, in 1872, and after extensive travel in Europe, began his professional studies at the law school of the University of Pennsylvania. He was admitted to the bar in 1876, and soon won notice by his unusual industry and legal capacity. He

had prepared for his graduating essay at the law school a very ingenious series of tables, showing the operation of the Rule in Shelley's Case under the decisions of the Supreme Court of Pennsylvania. This work was of so much merit that the legislature of Pennsylvania ordered that it be printed at the expense of the state. Mr. Gross was at once recognized as an authority on this difficult subject. His re-argument of the case of *Carroll vs. Burns* (108 Pa. St. 386), which turned upon the interpretation of the word "issue" in a will, was so able as to induce the Supreme Court of Pennsylvania to reverse its previous decision in the same case.

Another work which gained for Mr. Gross an enduring reputation was the well-known Pennsylvania text-book, "*Jackson and Gross on Landlord and Tenant*," which was chiefly the work of his hand. This exhaustive treatise occupied its authors during several years. The unwearied attention given to it by Mr. Gross brought on the illness to which, after a brave struggle, he finally succumbed. It would seem as if he paid the debt which, it is said, every lawyer owes to his profession by the sacrifice of his life.

Mr. Gross was not only a thoroughly trained lawyer; he was possessed of fine literary tastes and had carefully cultivated them. He was an accomplished musician—indeed, his knowledge of the science of music was remarkable, the result of a natural gift and much hard study.

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WILLIAM A. PORTER.

WILLIAM A. PORTER died in Philadelphia June 23, 1886. He was born in Huntingdon County, Pennsylvania, May 24, 1821, graduated at Lafayette College, in the same state, and was admitted to the Philadelphia bar April 26, 1842. In

the same year he was appointed by the governor sheriff of the county of Philadelphia, and subsequently became deputy attorney-general. In 1855 he was elected city solicitor of Philadelphia, and on January 20, 1858, was appointed a justice of the supreme court of Pennsylvania. Upon resigning from the bench he entered upon an active practice, in which he continued until his death, with the intermission of two years, from 1874 to 1876, during which he served as one of the judges of the Court of Commissioners of Alabama Claims, under an appointment by President Grant.

Judge Porter had the advantage of the most careful preparation for the bar, and almost immediately upon his admission, his capability was subjected to the severest test. The high sheriff of Philadelphia dying suddenly, Mr. Porter, who was then so youthful that it was doubted whether he had reached his full age, was appointed to fill the vacancy. It was subsequently settled by testimony taken and a judgment pronounced that he had passed his majority by several months.

Young as he was, he distinguished himself as Sheriff by a careful administration of his important functions, squaring his official conduct literally and absolutely by the law. His term of office was made memorable by a serious riot in the north-eastern part of the city, which he was called upon to suppress with the aid of a *posse comitatus*. Under trying circumstances he showed a personal bravery worthy of comment. On the expiration of his term as sheriff he was appointed by attorney-general Ovid F. Johnson, deputy prosecuting attorney, and showed himself to be an excellent criminal lawyer, winning approval not less by his compassion for the unfortunate, than by his severity to the vicious, defendants whom he was called upon to prosecute.

Judge Porter's term of service upon the supreme bench of the state lasted but a few months, and afforded him but slight opportunity to show his ability as a judge. During its brief period he filed a number of opinions, however, manifesting good judgment and fine legal perceptions.

The Court of Commissioners of Alabama Claims, the tribunal constituted for the purpose of distributing the money paid by the British Government in settlement of those claims, delivered many judgments that were formulated by Judge Porter, all of them remarkable for their good sense, sound judgment, lucid statement of the case and of the principles governing it.

As an advocate, and in the general practice of the law, Judge Porter met with the highest measure of success. His chief characteristic was sound judgment. He was one of the few men who never made a business blunder. Some happy combination of his faculties, some endowment from nature had so constituted him that he saw directly and clearly the goal toward which he was pushing, and he never traveled outside of the true line.

In his manners he was distinguished by a high-bred courtesy. His nature was kind and amiable, and his whole life based upon principle. He never spoke of his religious opinions to those outside of his family. He was in that respect properly reserved; but he showed his faith in his life and his actions. He had not only that charity which bestoweth freely upon those in want and misery, but the charity which conceals or palliates the frailties of those with whom we come in contact.

His death came upon him with great suddenness. As he was walking with a relative, he stopped to admire the beauty of a glorious sunset; at that instant his summons came, and he passed without consciousness of the transition from this world to the next. The example of his life may be held up to admiration as being harmonious in all its aspects, and its close suggests thoughts of deep significance.

TEXAS.

CHARLES SHANNON WEST.

CHARLES SHANNON WEST, a member of this Association, died at Austin, Texas, October 23, 1885. A few weeks before his death he resigned the office of judge of the supreme court of Texas on account of feeble health.

He was born in Camden, Kershaw District, South Carolina, September 24, 1829. Educated at Jefferson College, Pennsylvania, and in South Carolina College, at Columbia, of which he was a graduate, he taught school while reading law, and, coming to the bar, practised a short time in his native town. In November, 1852, he removed to Texas, and settled at Austin, the state capital, a stranger, without money, friends or influence, the bar comprising many able and experienced lawyers. He possessed, however, the surest and best elements of success. His education was thorough and classical, and gave him resources which his taste always continued to cultivate and improve. His ambition was high and steady. His habits were good. He had remarkable quickness and acuteness, great power of application and research, a judgment ingenious, fertile and solid, with many of the best faculties of the advocate—lucid statement, adroit argumentation, always; coolness and self-command, fertility in expedients, ready wit and humor, keen satire, often masterly argument, and at times genuine eloquence to reach the feelings. His memory was phenomenal, all its stores available, and his familiarity with the Texas decisions, citing them by title and volume, had no equal at the bar.

His advancement was rapid, and in 1856 he became the junior of the well-known law firm of Hancock & West, Judge Hancock being unsurpassed in the state for ability, reputation and influence. Their practice was very extensive in all classes of important litigation, in the supreme court of the state, the federal court and the state courts in a number of surrounding

counties. The versatility of Judge West as a lawyer was very noted. In the most difficult and important cases involving land titles, affecting corporations and commercial law, and in criminal trials, he had alike great skill, success and reputation. He excelled in all the parts of legal business—a judicious counsellor and man of affairs, skillful in written pleadings, knowing the jurors, full of resources; making no slip, but alert to avail of all slips by his adversary, careful in preparation, well equipped with the law of his case—a good case was entirely safe in his hands, and a bad case had in him a dangerous advocate. As a *nisi prius* lawyer and a supreme court lawyer he had equal prestige. His conduct of jury trials was admirable and many of the best briefs in the Texas reports are from his pen. Give him time, he was searching, exhaustive and conclusive, whilst for ready mastery and able presentation of cases prepared by others to be argued by him orally before the court he was unrivalled. He added the most agreeable charms of manner and had great social esteem and popularity.

He was elected for a term to the Texas legislature and to the convention of 1875, which formed the present constitution of the state, and was chairman of a commission of lawyers appointed to revise the state statutes in 1879. He served with gallantry and usefulness on the southern side throughout the Confederate war, and at its close was judge advocate general of the department west of the Mississippi.

In November, 1882, he was elected associate judge of the supreme court of Texas, and his high character at the bar excited confident anticipations of a most useful and distinguished judicial career. Whilst his earlier opinions are marked by ability, there is now but little doubt that his active and laborious professional life had overstrained his fine mental organization, and that symptoms of the giving way of his powers soon set in. His brethren on the bench first observed that his memory, better than a digest to refer to the decisions of the court, was impaired and gradually the weakening of

his faculties became apparent. The warmest and tenderest anxiety was felt that relief from duty and rest might work restoration. All that medical skill, kindness of friends and filial duty could do was done, but more and more the silver cord loosened and the golden bowl broke. He passed away gently from paralysis of the brain.

Judge West, in 1859, married the accomplished daughter of the Hon. Thomas H. Duval, so long the respected federal judge of the western district of Texas. Her death preceded his several years. His married life was happy. He left three sons of much promise. Texas enrols no brighter name among her lawyers.

VERMONT.

BLISS NELSON DAVIS.

BLISS NELSON DAVIS, the oldest member of the Caledonia County bar, died at his home in Danville, Vermont, February 11, 1885, at the advanced age of 83 years, from a severe cold contracted a fortnight before, which resulted in pneumonia.

Mr. Davis moved to Danville about the year 1850 and in that year entered upon the duties of state's attorney. In the years 1858-59, he was county senator, and had been a director of the Caledonia county bank for twenty-five years before his death and president of the same for several years.

In the year 1850, Mr. Davis, then state's attorney, had a remarkable adventure, of a sort which is fortunately of rare occurrence in the court room. The notorious "Bristol Bill," together with another criminal named Meadows, had been tried for counterfeiting, and after a very vigorous and hotly contested case, the prosecution being conducted by Mr. Davis, the jury brought in a verdict of guilty against both the respondents. A recess of a few days was taken to enable the judge to hold a session of court in another county, and upon the re-assembling of the court, "Bristol Bill" and his confederate were brought

into court for sentence. Both had fetters on their ankles but their hands were free. Mr. Davis was standing 'near the prisoners and stooped to answer some inquiry of Meadows. While he was in that position, "Bristol Bill" sprang forward and plunged a sharp pointed case-knife into Mr. Davis' neck, leaving it in the wound. The knife was promptly removed, and the wounded man taken to his hotel.

There was of course a great deal of confusion in the court-room, and the supposition was that Mr. Davis was fatally stabbed. The prisoner was secured and the court adjourned soon afterwards. The judge of the court, who was sitting at the time of the assault, went at once to Mr. Davis' room, expecting to find him dead or dying; but as soon as he saw the judge enter, he said, cheerfully, "I'm not dead yet, judge, and you and I will live to punish a great many rascals yet." Mr. Davis was struck with the knife on the side of his neck, and it passed nearly through his neck, back of the spine. The injury proved not very serious; but had the knife taken a little different course and passed forward of the spine the result would no doubt have been fatal. It seems that the prisoner had retained the knife given him with his dinner, and after grinding the end to a sharp point on the stones of his cell, concealed it in a pocket handkerchief, which he held in his hand during the trial. Some six years after this "Bristol Bill" was tried and convicted for this assault.

Mr. Davis recovered rapidly, and was up to the time of his last illness a vigorous and useful member of the bar. Although a man without classical education, or the polish which adorns some counsellors, he was a strong and vigorous advocate and justly forcible before a jury. He had excellent sense and judgment about the law, which he used with marked tact and effect very many times, and was a very dangerous antagonist in a debate. His kindly nature and Christian qualities endeared him to all, and a wide circle of acquaintances will regret his death, which removes a prominent figure from political, legal and social circles.

MEMORANDUM
OF
SUBJECTS REFERRED TO COMMITTEES.

Resolution of David Dudley Field, of New York :

“That this Association approves of the bill which was introduced into the United States Senate by Senator Cockrell, of Missouri, providing for the appointment of a commission to prepare a federal code of procedure, recommended strongly by Mr. Justice Miller, of the United States Supreme Court, or any other bill having a similar object.”

Referred to the Committee on Jurisprudence and Law Reform. (See pages 75 and 81.)

Resolution of Charles Borchertling, of New Jersey :

“That this Association recommends to Congress the passage of an act creating a penal colony of the United States, and to which each of the states and territories of the United States shall have the right and power to convey all such criminals as may have been convicted twice, and whose sentences shall not be less in the second conviction than five years’ penal service.”

Referred to the Committee on Judicial Administration and Remedial Procedure. (See page 76.)

Resolution of Benjamin A. Willis, of New York :

“That five thousand copies of the reports (both of the majority and minority) of the Committee on Delay and Uncertainty in Judicial Administration, with the appendix, be printed and distributed by the secretary.”

Referred to the Committee on Publications. (See page 77.)

Resolution of William E. Earle, of the District of Columbia, relating to the relief of Congress from the necessity for private legislation.

Referred to a Special Committee of five. (See page 77.)

Resolution of C. C. Bonney, of Illinois, relating to uniformity of practice in the courts of the United States, with draft of proposed bill.

Referred to the Committee on Judicial Administration and Remedial Procedure. (See pages 79, 503.)

Also draft of proposed bill to regulate inter-state debts, credits and collections, under the power to regulate commerce among the several states.

Referred to the Committee on Commercial Law. (See pages 79, 505.)

Also draft of proposed bill for courts of arbitration of the United States.

Referred to Committee on Jurisprudence and Law Reform. (See pages 79, 509.)

Resolution of Samuel Wagner, of Pennsylvania, relating to the enactment by Congress of a national bankrupt law.

Referred to the Committee on Commercial Law. (See page 79.)

Resolution of Edwin P. Green, of Ohio, relating to the publication and sale of state reports.

Referred to the Committee on Jurisprudence and Law Reform. (See page 81.)

NOTICE AS TO REPORTS.

By order of the Executive Committee the following prices have been fixed for the reports; they are about sufficient to pay the cost of printing and postage:

Vol. 1 (1878), paper, postpaid, 50 cents.

Vols. 2 to 9 (1879 to 1886), paper, postpaid, 75 cents.

Vols. 8 and 9 (1885 and 1886), cloth, postpaid, \$1.00.

Each member of the Association will receive, as soon as published, one copy of the proceedings for each year of his membership. A bound copy will be sent, unless the secretary is otherwise directed. Members desiring extra copies, and new members desiring back reports, will be charged the above prices. Vol. 4 is out of print.

Public libraries and educational institutions will be furnished with complete sets of the reports, without expense.

EDWARD OTIS HINKLEY,

Secretary,

43, North Charles Street,
Baltimore, Md.

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